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# **ANIMAL CONTROL ORDINANCE TOWN OF MONMOUTH**

*Adopted April 11, 2007*

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## ARTICLE I. IN GENERAL

### Section 1. Definitions

For the purposes of this ordinance, the following terms, phrases and words used herein shall be interpreted to read as follows; and any words not herein defined shall be construed in the context used in Title 7 M.R.S.A. Chapters 717 through 739 or Title 17 M.R.S.A. Chapter 42 and by ordinary interpretation, and not as word of art:

*Animal* means every living, sentient creature, not a human being.

*Animal control facility* means any facility owned, approved, and/or contracted by the Town of Monmouth for the purposes of housing, impounding, quarantine, medical treatment, or euthanasia of animals.

*Animal control officer (ACO)* means the person or persons, including but not limited to the appointed ACO and the members of the Town's Police Department, in accordance with Title 7, M.R.S.A., Section 3947. Duties of the ACO are the enforcement of Title 7, M.R.S.A. (Animal Welfare Laws & Regulations), Sections 3911, 3912, 3916, 3921, 3924, 3943, 3948, 3950, 3950-A, 3952 and 4041 and Title 17, M.R.S.A., Section 1023 responding to reports of animals suspected of having rabies in accordance with Title 22, M.R.S.A., Section 1313 and 1313-A and such other duties to control animals as the Town may require.

*Animal control shall include the following:*

1. *Control.* The Town shall control dogs at large.
2. *Medical attention.* The ACO shall take a stray animal to its owner, if known, or, if the owner is unknown, to an animal shelter and ensure that any injured animal that is at large or in a public way is given proper medical attention.
3. *Domesticated and undomesticated animals.* The Town shall control domesticated animals that are a cause of complaint in the community. The Town shall control animals that pose a threat to public health or safety. The Town may control undomesticated animals in matters on which no other department is charged by law to regulate.

*At-large* refers to dogs and other domestic animals which are legally in compliance with all local, state and federal laws, rules and regulations, other than a domestic cat, that is on any public right-of-way or publicly owned land unless controlled by a leash of not more than sixteen feet (16) feet in length as provided for in Section 34 of this Ordinance.

A domestic cat shall be considered at-large when not located on the premises owned or controlled by its owner and not otherwise under immediate effective control.

*Dangerous animal* means any animal which demonstrates behavior and/or possesses the vicious propensity to inflict serious bodily injury or death upon human beings and/or other animals and constitutes a danger to human life or other animals; or any animal which has behave in such a manner that the owner thereof knows, or reasonable should know, that the animal is possessed of tendencies to commit unprovoked attacks or to injure human beings or other animals; or any animal certified by a doctor of veterinary medicine, after observation thereof, as posing a danger to human beings or animals; or any animal, without provocation, that assaults an individual or animal; or any animal that commits an unprovoked act that causes a person, acting in a reasonable and non-aggressive manner, to reasonably believe that the animal will attack and cause bodily injury to that person or animal.

*Dog* means both male and female canines.

*Domestic animal* means any animal whose physiology has been determined or manipulated through selective breeding, and which does not occur naturally in the wild, and which may be vaccinated against rabies with an approved rabies vaccine, and has an established rabies quarantine observation period.

*Guard dog* means a dog trained and used by law enforcement, private security, or in protective functions where the dog is responsive to control by its owner or handler and used only for protective functions.

*Guide dog* means a dog trained to assist a physically challenged person.

*Immediate effective control* means the confinement of an animal to the premises of its owner by a fence of sufficient strength and height to prevent an animal from escaping therefrom; or contained inside a house or other enclosure; or secured on the premises by a leash of sufficient strength to prevent the animal from escaping from said premises and so arranged that the animal will remain upon said premises when the leash is stretched to full length in any direction. An animal shall also be considered under immediate effective control when used to assist a physically challenged person or when the animal is under the immediate control of a person by means of a cage, leash, or effective restraint to control said animal. The term “effective restraint” as used herein shall include, but not be limited to, training, employing audible and/or visual commands, remote control devices, and/or other means to control the animal.

*Kennel* means any business or establishment other than a veterinary hospital, whether operated separately or in connection with another business or establishment, that keeps, boards and/or trains dogs and/or cats or other animals, which may legally be present in such facilities, for profit. Kennels must be established, maintained and operated in compliance with all applicable zoning and land use regulations of the Town and all state statutes and regulations of the State of Maine.

*Livestock* shall mean, but may not be limited to, any horses, mules, donkeys, cattle, goats, sheep or swine.

*Owner* means any person, partnership, corporation or association that harbors, shelters, keeps, controls, manages, possesses or has whole or part interest in any animal. The occupant, owner or head of a household of any premises where an animal remains for 24 hours or more shall be presumed to be the owner of such animal for the purposes of this ordinance.

*Pet* means any animal which may be legally owned in accordance with the provisions of this ordinance, normally kept for pleasure rather than utility, excluding livestock, and is in the owner’s possession and for which it can be reasonably demonstrated that the care of said pet is the responsibility of a given individual or individuals.

*Pet shop* means any business or establishment, other than a veterinary hospital, whether operated separately or in connection with another business or establishment, that buys and sells dogs, cats, and/or other species of pet for profit. Pet stores or shops must be established, maintained and operated in compliance with all applicable zoning and land use regulations and all other applicable laws and rules of the Town and the State of Maine.

*Public auction* means any place or facility where animals are sold to the highest bidder.

This definition does not apply to individual sales of animals by private owners to other private owners.

*Public nuisance* means the following:

- (1) An owner's failure to control, restrain or otherwise allow, either by conduct or condition, any animal to:
  - a. Engage in conduct which establishes such an animal as a "dangerous animal"; or
  - b. Be at-large; or
  - c. Cause a disturbance by excessive barking or noise-making near the private residence or business of another or of any government or public facility; or
  - d. Produces maggots, flies, odors, or unclean conditions sufficient to annoy or endanger adjacent property owners, residents or other individuals who may be reasonably exposed to such conditions; or
  - e. Chase vehicles or molest, attack or interfere with other persons and animals on public or private property.
- (2) Any animal normally found in the wild that has entered onto any public or private property and by its presence is a threat to public health and safety or is generally interrupting the tranquility of the location.

*Restraint* means to control an animal by physical means, such as a cage, leash, rope or confinement within enclosed space or by training or employing audible and/or visual commands, remote control devices, and/or other means to control the animal.

*Stray* means an animal that is improperly restrained and that wanders upon a public place, roadway, street, highway, or property of another person.

*Town* means the Town of Monmouth.

*Vaccination* means the inoculation of an animal with a rabies vaccine or other medicine that is licensed by the United States Department of Agriculture for use in that species, and which is administered by a licensed veterinarian for the purpose of immunizing the animal against rabies or other diseases.

*Veterinary hospital* means any establishment that is maintained and operated by a licensed veterinarian for the diagnosis, treatment or surgery of injuries and diseases to animals.

*Wild animal* means any animal not normally considered domesticated and which is now or historically has been found in the wild, or in the wild state, including but not limited to the following: Reptiles of any type; or fish; or birds, including migratory waterfowl; or mammals, large and small; or any species of animal illegal to own under federal, state or local law.

## **Section 2. Penalties**

Any person violating any provision of this ordinance shall pay a fine of no less than \$75.00, unless otherwise specified in this ordinance, for each of the first and second violations. The minimum penalty for any subsequent violation of this ordinance shall be \$250.00, unless otherwise specified in this ordinance, for each offense. In no case shall the court assess a fine that is less than those defined in state statute if the ordinance minimums are less. Violators of this ordinance must pay for all costs associated with any action taken by the ACO involving the impoundment, treatment or

humane euthanasia by a licensed veterinarian relating to animals of which they are owners. Where financial hardship is demonstrated, a violator of this ordinance may perform community service in lieu of financial penalty if such a program is available through the Town.

### **Section 3. Enforcement.**

(a) The ACO shall be responsible for enforcement of this ordinance except as may be provided herein. Enforcement may be by the filing of a criminal complaint in District or Superior Court; by civil proceedings to enjoin nuisances; or in any other manner authorized by federal, state or local law, rule or ordinance.

(b) It shall be unlawful for any person being issued a citation to District Court or any civil proceeding to intentionally or knowingly fail to give the ACO their true name and address or to intentionally or knowingly fail to appear in accordance with the terms of a citation or civil process issued by the ACO.

(c) If the individual who is to receive the citation is not present, the ACO may send the citation to the alleged offender by certified or registered return receipt mail. If said citation should come back unclaimed, the citation shall be sent regular mail. If this regular mailing is returned as unclaimed, the service shall then be deemed as completed.

### **Section 4. Exemption.**

This ordinance shall not apply to any animal accompanying a physically challenged person who, by reason of his/her handicap, is physically unable to comply with the requirements of this ordinance.

### **Section 5. Severability Clause.**

If any part of this ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

### **Section 6. Repealed.**

All other applicable ordinances are repealed.

## **ARTICLE II. ANIMAL CARE – GENERAL**

### **Section 7. Care of Animal(s).**

Animals shall be provided humane care, treated and transported in a humane manner and not in violation of any federal, state or local law, rule or ordinance.

### **Section 8. Prohibited Actions.**

A person commits an offense if:

(1) A person fails to provide an animal under his/her control and/or ownership with adequate, wholesome food and water, proper shelter and protection from inclement weather, and veterinary care when needed to prevent suffering; or

(2) A person having charge or custody of an animal, places or confines such animal, or allows such animal to be placed or confined in a motor vehicle, trailer, or other enclosure under such conditions, or for such a period of time, as to endanger the health of the animal due to heat, lack of food or water, or such other circumstances as may cause injury or death to the animal; or

(3) A person treats an animal in an inhumane or cruel manner as defined by Title 17 M.R.S.A., Chapter 42.

- (4) A person knowingly owns, harbors, trains, sells, or offers for sale any animal which is used for the purpose of fighting; or to be trained, tormented, badgered or baited for the purpose of causing or encouraging said animal to attack human beings or animals when not provoked, except that this section shall not apply to guard dogs or dogs used by local, state or federal law enforcement agencies; or
- (5) A person mutilates any animal, whether such animal is dead or alive. This subsection does not apply to medical or veterinary medical research, medical or veterinary medical autopsies, or biology class use of animals for educational purposes; or
- (6) A person causes an animal to fight another animal or person; or
- (7) A person other than a licensed veterinarian docks an animal's tail, or crops an animal's ears, or castrates an animal provided, however, this subsection shall not apply to normal livestock operations occurring within the Town; or
- (8) A person dyes or colors chicks, ducks, rabbits, reptiles or birds; or
- (9) A person transporting an animal fails to effectively restrain an animal so as to prevent the animal from leaving or being accidentally thrown from a vehicle during normal operation of the vehicle; or fails to effectively restrain an animal so as to prevent infliction of bodily harm to passerby. Provided, however, the provisions herein shall not prohibit a person from transporting an effectively confined or tethered dog(s) in the open bed of a pickup truck in compliance with Title 29A, section 2087; or
- (10) A person is in control of a motor vehicle which strikes a domestic animal or livestock within the Town and fails to report the accident to the Police Department or the ACO as soon as practical; or
- (11) A person abandons any animal, including the abandonment of an impounded animal at the Town contracted or owned animal control facility with the intent to readopt the animal to avoid impoundment fees; or
- (12) An animal damages or destroys public property while in their possession. If the person in possession of the animal at the time the property damage cannot be determined, the owner may be charged under this section if the evidence can reasonably demonstrate the identity of the animal; or
- (13) Permits any public nuisance, as defined in Section 1, to exist.

### **ARTICLE III. RABIES CONTROL; QUARANTINE**

#### **Section 9. Rabies Inoculation.**

Before the Town Clerk issues the required licenses for any animal requiring a rabies vaccination as stipulated in state statute, the Town Clerk shall require the owner to prove immunization against rabies as prescribed by state statute and/or by state rules and regulations.

#### **Section 10. Animal Bites and Scratch Reports; Submission to Quarantine.**

(a) Any person who is bitten or scratched by an animal shall report that fact to the ACO or the Police Department within 24 hours. If the person bitten or scratched is a minor under the age of 18, the parent or legal guardian of such minor, if he/she has knowledge of the incident, shall report that fact to the ACO or the Police Department within 24 hours.

(b) A person who owns, keeps, harbors or allows an animal to remain on premises under his/her control shall report to the ACO or the Police Department, within 24 hours, any incident where such animal has bitten or scratched any person.

(c) If the ACO has determined that there is reasonable evidence of an animal biting or otherwise attacking any person, and such animal has rabies or symptoms thereof, or is suspected by the ACO of having rabies, or has been exposed to rabies, upon demand of the ACO or his/her deputies, it shall be surrendered to him/her and shall be impounded by the ACO at a facility, which in his/her opinion, is properly suited to safely handle the animal for a period of ten days. The ACO may, upon written request of the owner, authorize the owner to confine the animal with a chain appropriate to the animal's size, and in a manner where no person will be bitten by the quarantined animal, for a period of ten days. During such owner confinement, the animal shall be subject to examination by the ACO or his/her deputy, State Warden or a licensed veterinarian at any time.

(d) Impoundment at any state or town approved facility for rabies quarantine purposes shall be at the expense of the owner of the impounded animal, livestock or wildlife. In the event a harbored animal cannot be identified and located within a reasonable length of time, the victim, at his/her option (or at the option of the parent or legal guardian in the case of a minor under the age of 18 years of age), may elect to have the animal examined by a veterinarian, or to have the tissue submitted for laboratory examination; and the costs so incurred shall be borne by the victim. No animal, livestock or wildlife confined for quarantine purposes under the provisions of this section shall be released to any person until all vaccinations required by state statute have been given.

(e) If the harbored animal refuses to release for quarantine such animal, then it shall be the duty of the ACO to obtain a seizure warrant from an appropriate judicial official for seizure and quarantine of the animal in question.

(f) The ACO may order that all impoundment fees for the quarantine be paid by the person bitten or scratched if:

- (1) The animal has a rabies vaccination certificate; or
- (2) The animal was on property under the control of animal's owner when the bite or scratch occurred; or
- (3) The bite or scratch occurred when the animal was acting to defend its owner or his/her property, or after reasonable provocation.

(g) The ACO shall use his/her discretion to determine what provisions of this ordinance or state law shall be most appropriate in all matters having to do with the quarantine of any animal.

### **Section 11. Contents of Required Animal Bites and Scratch Reports.**

When an individual is placed under a duty to report an incident in which an animal has bitten or scratched some person or some animal or to report an animal known or suspected to be rabid, that report to the ACO shall include, if the person making the report knows, the following information:

- (1) The location where the bite or scratch occurred.
- (2) The location where the animal which committed the act or which is known or suspected to have rabies or have been exposed to rabies can be located.



- (3) The name and address of any person who was bitten or scratched.
- (4) The name and address of the person who owns, keeps, harbors, or has control over the premises where the animal committing the act normally can be found.
- (5) The names and addresses of persons who own, keep or harbor any other animal exposed to rabies can be found.

## **ARTICLE IV. IMPOUNDMENT, REDEMPTION AND DISPOSITION OF ANIMALS**

### **Section 12. Impoundment Generally.**

(a) The ACO is hereby authorized to capture and impound any animal upon having probable cause to believe said animal to be in violation of any provision of this ordinance or state law which authorizes or requires the animal's capture and impoundment, and in so doing, to enter upon any fenced or unfenced lot, tract or parcel of land when deemed necessary for the protection of public health, safety and welfare. As a matter of policy, the ACO shall not enter private property to capture and/or impound any animal known to belong to the owner of said property without probable cause to believe that said animal poses a threat, public nuisance or danger to property, human beings or other animals.

(b) It shall be unlawful for any person to interfere with, or attempt to prevent, an ACO or those acting in their capacities as law enforcement agents, from capturing or impounding any animal which may be legally impounded or otherwise interfering with the ACO, his/her designees, or any law enforcement agents while carrying out their lawful duties.

### **Section 13. Duties of the ACO.**

(a) It is the duty of the ACO to capture and impound, when appropriate, wild or non-domesticated animals in response to citizen complaints of public nuisance or to control feral populations.

(b) If, by identification tag, the owner of an impounded animal can be identified, the ACO will, as soon as practical, notify the owner either in person or by telephone of said impoundment. If the animal is locally owned within the town and telephone contact cannot be made, the ACO will leave a notice at the owner's last known and verifiable residence indication that the animal has been impounded.

(c) All impounded animals shall be kept for not less than six days, unless the animal is reclaimed earlier by the rightful owner under conditions acceptable to the ACO. However, no impoundment period is required for an animal voluntarily delivered and release into the custody of the ACO by its owner.

(d) After the expiration of any required impoundment period, the impounded animal shall be released to the animal control facility or veterinary hospital contracted by, or doing business with the Town. At that time, the animal shall be disposed of by adoption from the facility, by offering it to a local animal humane group for adoption, or by humanely destroying the animal. No record shall be kept by the ACO as to the disposition of an individual animal after release is made to the animal control facility/veterinary hospital for the purposes specified in this paragraph.

### **Section 14. Disposal of Dead Animals.**

It shall be the responsibility of the owner to remove and properly dispose of a deceased animal within 24 hours of the animal's death. Proper disposal constitutes bringing such animal to a licensed veterinarian for cremation or proper burial at a pet cemetery.

**Section 15. Disposal of Dead Animals Found on Public Property.**

It shall be the responsibility of any person to notify the ACO, the Police Department or the Department of Public Works of the location of the deceased animal so proper removal and disposal may occur.

**ARTICLE V. DANGEROUS ANIMALS****Section 16. Permit Required.**

No person shall knowingly sell, own, offer for sale, breed, possess, keep, but or attempt to buy, or train a dangerous animal within the Town unless the owner has received proper permits and/or authorizations pursuant to this ordinance.

**Section 17. Keeping of Dangerous Animals.**

The owner of a dangerous animal shall be required to:

- (a) Register the dangerous animal with the ACO; and
- (b) Obtain liability insurance in an amount not less than \$300,000.00 covering bodily injury or death of any person or animal, or for damages to any person's or entity's property, resulting from the keeping of such dangerous animals(s); and
- (c) Restrain the dangerous animal at all times on a leash in the immediate control of the owner or in a secure pen enclosure as prescribed in Section 18; and
- (d) Provide to the ACO the name and address of the owner, breed, age, sex, color, and any other identifying marks of said animal; the location where the animal is to be kept if not at the address of the owner; two color photographs of the dangerous animal; and the aforementioned certificate of liability insurance; and
- (e) Provide proof of the required documents necessary to register the animal, and pay the required registration fee of \$100.00. The ACO shall provide to the owner a registration tag designating the animal as dangerous. The owner must place the tag on the animal's collar and must ensure that the animal wears such tag and collar at all times; and
- (f) Not allow the animal to go outside its pen, cage or enclosure unless the animal is under physical restraint and securely muzzled. No person shall permit a dangerous animal to be kept outside its cage, pen or enclosure on a chain, rope or other leash type. Dangerous animals shall not be leashed to inanimate objects such as trees, posts, buildings, etc. Signs giving notice of the dangerous animal shall be prominently displayed so that all persons entering said property are immediately notified a dangerous animal is being kept at the location.

**Section 18. Dangerous Animal Enclosures.**

The pen, cage or enclosure for a dangerous animal must be constructed from materials of sufficient strength to prevent the animal's escape, and must have secure sides, a secure top attached to the sides, and a secure bottom which is either attached to the sides or constructed so that the sides of the structure are embedded in the ground no less than two (2) feet.

**Section 19. Authority to Seize Dangerous and Wild or Exotic Animals.**

In the event that any animal is declared to be a dangerous animal and/or where a wild or exotic animal is found in violation of any provision of this ordinance or state law, such animal may be seized immediately and impounded by the ACO. Where said animal is found at large and is presenting a clear and present

danger of imminent bodily injury and/or death to the ACO, other human beings or animals, the animal may be destroyed and the owner notified if the owner can be reasonably established.

#### **Section 20. Penalties.**

The minimum financial penalty for a violation of this section is \$500.00 for the first offense; \$700.00 for the second offense; and \$1,000.00 for any subsequent offense. This penalty shall not be waived by the court.

### **ARTICLE VI. RIGHT OF ENTRY.**

#### **Section 21. Right of Entry.**

(a) The ACO is hereby authorized to enter upon any fenced or unfenced lot, tract or parcel of land for the purpose of capturing, impounding and/or quarantining any animal upon having probable cause to believe said animal to: have bitten, injured or otherwise attacked a human being or other animal; to have, or have been exposed to rabies or another communicable disease posing a danger to the public health, safety or welfare; or otherwise pose a clear and present danger to human beings or other animals. This authorization is granted due to the emergency created by the potential rabies hazard or danger of injury to persons or other animals, and in recognition of the likelihood that such animals will otherwise escape capture. As a matter of policy, ACO's shall not enter upon private property to capture and/or impound any animal known to belong to the owner of said property without probable cause to believe said animal poses a threat or danger to property, human beings or other animals.

(b) Furthermore, should the ACO be unable or not permitted to gain entry to a property or premises where a dangerous animal(s) is believed to be present, the ACO or any law enforcement agent may seek an ex parte order from the district court or superior court for authorization to take possession of the dangerous animal.

### **ARTICLE VII. KEEPING OF DOMESTIC/ NON-DOMESTIC ANIMALS**

#### **Division 1. Livestock**

#### **Section 22. Keeping of Livestock Generally.**

It shall be unlawful for any person to keep or permit the keeping of livestock on premises owned by him/her or under his/her control, except in compliance with following regulations:

(1) Livestock shall only be kept on lots or tracts of land zoned or designated for rural or agricultural purposes by the Town.

(2) Livestock shall not be kept on lots and tracts of land less than one acre in area.

(3) The provisions of Article II Animal Care Generally herein, relative to animal care in general, shall specifically apply to the keeping of livestock.

#### **Section 23. Adequate Fences and Barriers.**

It shall be unlawful for any person to keep on their premises any livestock without providing adequate fences or barriers that will prevent such livestock from escaping and/or damaging neighboring flowers, trees, shrubbery and/or other property located on adjacent property.

#### **Section 24. Other Places Livestock Prohibited.**

It shall be unlawful for any person to ride or allow any type of livestock upon any public school ground, public park or municipal/school grounds within the Town other than public rights-of-way or areas

designated for such purposes. Provided , however, the provisions of this section shall not apply to the riding or showing of horses or other livestock in conjunction with town authorized parades, carnivals or other school or civic sponsored programs or events which are in compliance with all town, state and federal law, rules and regulations.

#### **Section 25. Impounding of Livestock.**

The provisions of Section 14 herein, relative to impounding of animals in general, shall specifically apply to the impounding of livestock.

### **Division 2. Bees**

#### **Section 26. Keeping of Bees**

All persons within the property of the Town adhere to the statutes of the State as described in Title 7 M.R.S.A. Chapters 521 through 531, as well as:

(1) All colonies' hives shall be located a minimum of 100 feet from any inhabited dwelling other than that of the person keeping such bees; and

(2) There is adequate source of water available at all times to the bees on the owner's property.

### **ARTICLE VIII. PROHIBITIONS**

#### **Section 27. Placement and Baiting of Animal Traps.**

It shall be unlawful for any person to place, set or bait any trap for the purposes of catching, wounding or killing of any animal, fowl or reptile without permission or assistance of the local, state or federally designated ACO. This section, however, does not preclude the use of commercially sold rat and mouse traps, nor does this section preclude the use of "Have-A-Heart" traps for the relocation of animals, fowl or reptiles.

#### **Section 28. Consent to Trap**

The Town hereby adopts into this Ordinance, Title 12 M.R.S.A., Part 13, Chapter 917, Section 12253 (1): Trapping without Written Consent, Section 12253 (2): Trapping Near Occupied Dwelling without Written Consent, and Section 12243 (3): Trapping Near Compact, built-up Portion of City or Village.

#### **Section 29. Prohibition of Animal Poisoning.**

It shall be unlawful to place any substance or article which has in any manner been treated with any poisonous substance in any place accessible to human beings, birds, dogs, cats or other animals with the intent to harm or kill animals. This section, however, does not preclude the use of commercially sold rodent poisons when applied in accordance with the manufacturer's direction for such use.

#### **Section 30. Noise Prohibition.**

The provision of Section 36 herein, relative to public nuisance in general, shall specifically be applied to noise prohibition.

#### **Section 31. Odors and Unclean conditions Prohibitions.**

It shall be unlawful for any owner to allow an animal to produce odors or unclean conditions sufficient to create a public nuisance.

### **Section 32. Animals At-Large Prohibition.**

- (a) It shall be unlawful for any owner to allow an animal to chase vehicles or molest, attack or interfere with other animals or persons on public property, or to be at-large as defined in Section 1 of the ordinance.
- (b) It shall be unlawful for an animal to be left unrestrained in a parked motor vehicle so as to allow the animal to project its head from the vehicle.

## **ARTICLE IX. DOGS**

### **Section 33. Registration and Identification.**

A dog, which is at least six (6) months old, must be licensed by its owner in accordance with Title 7 M.R.S.A., Section 3951. A dog, which is at least two (2) months old, must wear a collar or harness to which is attached an identification tag with the owners' name and address or telephone number.

### **Section 34. Sixteen-Foot Leash Requirements.**

Only domestic animals are authorized on all city-owned public ways, sidewalks, and all publicly owned property within the Town. Any such animal shall be on a leash or other tether, in the control of an individual, of not more than sixteen (16) feet in length.

*\*Cross Reference: Town of Monmouth Parks Ordinance; Section 5 (c).*

### **Section 35. Number of Dogs Limited.**

- (a) It shall be unlawful for any person to keep or harbor within the Town more than five (5) dogs over four (4) months old in or about any premises, house, barn or other building, or in or about all buildings on any one premises occupied by any one family, and the keeping or harboring of dogs as aforesaid is hereby declared to be a public nuisance.
- (b) The payment of the license or licenses on dogs required by Maine State law, as amended, shall not be construed to allow the keeping of more than five (5) dogs, as aforesaid, on any one premise.
- (c) The limitations in this Section shall not apply to any person, group of persons, or corporations engaged in the commercial business of breeding, buying, training, selling or boarding of dogs, or operating a veterinary hospital, providing a state kennel license is obtained if applicable.

## **ARTICLE X. NUISANCES**

### **Section 36. Public Nuisances.**

It shall be unlawful to harbor or keep any animal or bird, which causes annoyance to the peace of any person, either by:

- (1) Excessively barking, howling or making other sounds common to its species; or
- (2) Failing to keep any female dog in heat confined at all times. Every bitch in violation of this section shall be impounded and the owner, keeper or person harboring such bitch, shall be deemed guilty of an offense; or
- (3) Knowingly have any animal, requiring a license or some other form of registration by the Town or the State, run at-large.

(a) Penalty: Any person with three (3) violations of this subsection shall be required to restrain the nuisance animal at all times. Such restraint shall consist of an appropriate tether which will prevent the

animal from leaving the owner's property or a secure pen enclosure. Failure to comply with of this section shall be deemed a separate offense and fines shall be in accordance with Section 2.

**Section 37. Disposal of Excrement.**

All manure and other excrement shall be disposed of in such a manner so as to prevent it from becoming a public nuisance or health hazard. With regard to dogs on public or private property, other than the owner's, the owner shall be responsible for the immediate removal of excrement.

**ARTICLE XI. DAMAGE TO PROPERTY**

**Section 38. Complaint and Recovery.**

(a) *Complaint.* Whenever any damage is inflicted on any person and/or property by a dog, the victim and/or owner may make a complaint to the ACO or Town Police Department within the next business day following discovery of the damage.

(b) *Recovery.* If after reviewing the evidence, the ACO and/or Police Department are satisfied that a dog committed the damage, they shall estimate values of the injured person or damaged property. The investigation agents will then determine if the dog can be reasonably identified and if so, the owner of said dog will be liable for all related expenses caused by said dog.

**Section 39. Wildlife Causing Damage or Nuisance.**

The Town of Monmouth, the Police Department and the ACO are not responsible for wildlife complaints except in cases of suspected rabies or public safety. Such complaints will be referred to the Maine Warden Service as specified in Title 12 M.R.S.A., Chapter 921.

**ARTICLE XII. ANIMAL SAFETY**

**Section 40. Authority of the ACO**

A person commits an offense if a person parks or leaves any animal in any type of vehicle and does not provide for adequate ventilation or allows the animal to protrude its head out of the vehicle and consequently attacks or attempts to attack a passerby.

The ACO shall have, for the purposes of this section, the authority to order the removal of a vehicle or to remove the animal from any vehicle by any means possible if, in the opinion of the ACO, it appears that the animal is in distress or the animal poses a threat or public nuisance to the general public. The cost of such removal shall be the responsibility of the owner of the vehicle.

**TOWN OF MONMOUTH  
BOARD OF APPEALS  
ORDINANCE  
(Amended: June 9, 2015)**

**Section 1. Authority to Establish.**

Pursuant to 30-A M.R.S.A. Sub-section 2691, and 3001, a Board of Appeals is hereby established for the Town of Monmouth, hereafter referred to as, "the Board".

**Section 2. Composition; Appointment; Qualifications; Terms; Removal; Vacancies.**

The Board shall consist of 5 regular and 2 alternate members who shall be appointed by the Municipal Officers and who shall be a Monmouth resident. Neither a Municipal Officer, nor the spouse of the Municipal Officer, shall be a member.

Members shall serve for a term of 3 years and shall continue to serve in office until their successors are appointed. The current board members shall continue until expiration or resignation. Re-appointments or new appointments shall be staggered so as nearly an equal number of terms shall expire annually (Year One - 2 regular members; Year Two – 2 appointments or re-appointments; and Year Three – 1 regular member and 2 alternates).

The Municipal Officers may remove a member for cause, after notice and hearing. Vacancies shall be filled within 60 days by appointment of the Municipal Officers for the unexpired term.

**Section 3. Officers; Meetings; Quorum; Procedure.**

The Board shall annually elect a Chairman, Vice Chairman, and a Secretary from among its' members.

The Chairman shall call meetings as necessary, or when requested by a majority of members or by the Municipal Officers.

A quorum is necessary to conduct business and shall consist of at least a majority of members. The Vice Chairman shall serve in place of the Chairman when the Chairman is not available or cannot serve in the Chair capacity. The Chairman shall designate an alternate member to serve in place of a regular member who is absent or disqualified; alternate members shall otherwise not be considered members for purposes of a quorum or voting.

The Chairman shall preside at all meetings and shall be the official spokesman of the Board. The Secretary (\*) shall maintain a permanent record of all proceedings and correspondence of the Board. These shall be a public record and shall be filed with the Town Clerk. The records may be inspected at reasonable times.

The Board may adopt written rules of procedure governing the conduct of any hearing or proceeding, provided that they are not inconsistent with statutes, this Ordinance, or any other Ordinance. The Chairman may waive any rule for good cause shown. The Board may waive in cases of extreme hardship. Fees may be altered/waived by the Municipal Officers.

#### **Section 4. Jurisdiction; Appeals.**

The Board shall have jurisdiction to hear and decide appeals from any Town of Monmouth Ordinance that references the Board of Appeals.

The Board may exercise jurisdiction only upon receipt of a written appeal from a person or legal entity aggrieved that is filed within 30 days after the action is denied or ordered. The written appeal should contain a non-refundable fee, as to be determined by the Municipal Officers, and stating the relief sought and the grounds therefor.

The Board shall have no authority to act in any other matter except as expressly provided by Ordinance or statute.

#### **Section 5. Hearings; Decisions; Notice.**

No appeal may be decided by the Board without first providing an opportunity for a hearing. A whole case will be heard in “de novo”, which is a hearing that is ordered by an appellant court that has reviewed the record of a hearing. Therefore, “a new hearing with a new beginning.”

Notice of any hearing shall be given to the public by publication in a newspaper of general circulation at least 7 days before the hearing, to the appellant by mail at least 14 days before the hearing, and to the Planning Board or other appropriate Municipal Officials by mail or hand-delivery at least 14 days before the hearing.

The Board may receive oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. All parties may present their cases by oral or documentary evidence, submit rebuttal evidence and cross-examine witnesses. The transcript of testimony, if any, and exhibits, together with all documents filed in the proceeding and the decision of the Board, shall constitute the record.

(\*) The Board may retain clerical assistance for this work.



In deciding any appeal, the Board shall be guided solely by standards, criteria, or requirements of the applicable statute, Ordinance, or regulations. The Board may reverse the decision of other officials only if it is clearly erroneous or not supported by substantial evidence in the record. All decisions shall include written findings and conclusions, as well as reasons or basis thereof, upon all of facts, law, or discretion, and the appropriate order, relief, or denial.

Notice of any decision shall be mailed or hand-delivered to the appellant, the Planning Board, or other appropriate Municipal Officials and the Municipal Officers within 7 days after the decision.

#### **Section 6. Reconsideration.**

The Board may reconsider any decision within 30 days after its' prior decision and may conduct additional hearings and receive additional evidence, provided that notice of any hearing or decision to reconsider shall be given as provided herein for hearings and decisions generally.

#### **Section 7. Appeals to Superior Court.**

Any person aggrieved by a decision of the Board may appeal to Superior Court in accordance with Rule 80B, Maine Rules of Civil Procedures, within 45 days after the decision is rendered, as per Maine Revised Statutes, Sub-section 2691, Board of Appeals, 3. Procedure. (G).

#### **Section 8. Repeal of Prior Ordinances, Ratification of Prior Board's Decisions.**

Any prior Ordinance or legislative act establishing or purporting to establish a Board of Appeals by that or another name, or governing or purporting to govern its membership, authority or procedure, is hereby repealed. The intent of this Ordinance is to abolish and replace any such Board with a Board of Appeals lawfully established and authorized, among other things, to hear zoning appeals pursuant to 30-A M.R.S.A., Sub-section 4353.

Any act prior to the Board commonly known as the Board of Appeals and abolished hereby is hereby ratified and confirmed.

#### **Section 9. Severability.**

The lack of validity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision, which shall remain in full force and effect.

#### **Section 10. Effective Date.**

This Ordinance shall take effect upon ratification at the Town of Monmouth Town Meeting dated June 9, 2015.



# **Town of Monmouth Comprehensive Development Ordinance 2009**

(Adopted June 9th 2009, Amended June 12th, 2012)  
(Amended June 12<sup>th</sup>, 2015)

# Comprehensive Development Ordinance

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# **Comprehensive Development Ordinance**

## **1: Legal Basis for this Ordinance**

### **1.1 Legal Authority**

This Ordinance has been prepared and enacted in accordance with the provisions of Title 30-A, Maine Revised Statutes Annotated, Sections 3001, Home Rule; 4321 et. seq. and subject to the authority and limitations of Title 30-A, MRSA, Section 4353, Regulation of Manufactured Housing; and Title 30-A, MRSA, Section 4401-4407, Subdivision Law.

### **1.2 Purpose**

The purpose of this Ordinance is to promote and protect the health, welfare and safety of the Town and its residents through a system of land use regulation that achieves the following:

- (i) to ensure the adequate design, layout, construction and maintenance of land, improvements and structures;
- (ii) to provide a review of construction, subdivision, and commercial development proposals with the potential to impact the Town of Monmouth;
- (iii) to assure that new development meets the goals and conforms to the policies of the current Comprehensive Plan Update;
- (iv) to conserve the town's natural beauty and visual character by ensuring the adequate design, layout, construction and maintenance of land, structures, signs and other improvements;
- (v) to accommodate change and growth in a manner that will prevent disruptions in community life and in the provision of town services;
- (vi) to protect Monmouth's natural resources including but not limited to the town's lakes, ponds, streams, wetlands, ground water, soils, and wildlife habitat from damage and/or unnecessary negative impacts;
- (vii) to provide the applicant, town residents, and the Planning Board with clear procedures and requirements for the review of applications for development.

### **1.3 Superseding of Prior Ordinances**

The adoption of this ordinance repeals the following ordinances in their entirety:

- (i) Building Permit and Minimum Lot Size Ordinance for the Town of Monmouth, enacted June 26, 1993, as amended;
- (ii) Manufactured Housing and Manufactured Housing Ordinance, enacted February 22, 1990, as amended;
- (iii) Town of Monmouth Ordinance for the Regulation of Multi-family Housing, enacted June 2, 1987, as amended;
- (iv) Town of Monmouth Non-Residential Site Plan Review Ordinance, enacted May 16, 1997, as amended; and
- (v) Town of Monmouth Subdivision Ordinance enacted May 29, 1992, as amended.

### **1.4 Legal Provisions**

#### **1.4.1 Conflict with Other Ordinances**



Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

**1.4.2 Validity and Severability**

Should any provision or section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other provision or section of this Ordinance.

**1.4.3 Effective Date**

This ordinance shall become effective upon the date of enactment.

**1.5 Amendments**

1.5.1 This Ordinance may be amended by a majority vote of the Town at a Town Meeting in accordance with the statutory procedures specified for the enactment of ordinances.

1.5.2 Any proposed amendment shall be presented at a public hearing of the Planning Board.

1.5.2.1 The public hearing shall be advertised by a public notice posted in the Town Office at least thirteen (13) days prior to the date of the hearing, and by two notices in at least one newspaper of general circulation, the first to appear at least twelve (12) days prior to the date of the hearing; the second to appear at least seven (7) days prior.

1.5.3 A proposed amendment shall be placed on the warrant of the Town Meeting by a majority vote of the Board of Selectmen, upon the recommendation of the Planning Board or upon submission of a valid petition signed by a minimum of ten (10) percent of the number of Monmouth residents voting in the most recent gubernatorial election.

1.5.4 The text of a proposed amendment may not be further amended on the floor of a Town Meeting.

## **2: Administration and Operation of this Ordinance**

**2.1 Applicability**

2.1.1 This Ordinance shall apply to land uses and development within the Town of Monmouth. All divisions of land, and buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved in the Town of Monmouth shall be in conformance with the provisions of this Ordinance.

2.1.2 This ordinance does not regulate routine maintenance and upkeep of residential or commercial property. This ordinance does not regulate the use of land for other than construction or development of structures or earth moving. This ordinance does not regulate the use of land for agriculture and forest management, unless such land use includes the development of structures.

**2.2 Guide to Operation**

This ordinance regulates the following forms of land use. The citation of specific sections is intended as a guide to the reader and does not limit the authority of the Town to enforce other sections of the ordinance.

- 2.2.1 The creation of new, individual lots and standards for the location of buildings within lots is generally subject to the provisions of Chapter 3.
- 2.2.2 The process for issuance of building permits for the construction or placement of buildings and structures is generally subject to the provisions of Chapter 4.
- 2.2.3 The process and standards for the issuance of Planning Board approval for residential and commercial development, including subdivision of land or buildings and the establishment or expansion of non-residential development, is generally subject to the provisions of Chapter 5. Chapter 5 is divided into two parts: Part One describes the process for the granting of development approval by the Planning Board; Sections 5.7 and 5.8 describe the criteria and standards which must be met in order for approval to be granted.
- 2.2.4 Definitions of terms used in this Ordinance are located in Chapter 6.
- 2.2.5 This ordinance is intended to work in coordination with the Town of Monmouth Shoreland Zoning Ordinance. This ordinance does not contain specific shoreland zoning provisions, but development subject to shoreland zoning may also be subject to the requirements of this ordinance.

## **2.3 Companion Ordinances**

The issuance of a permit or approval under the terms of this ordinance does not relieve the developer of the obligation to obtain permits under other federal, state, or local authority. Specifically, this ordinance does not cover:

- (i) permits for development within shoreland zones, as defined and regulated by the Town of Monmouth Shoreland Zoning Ordinance;
- (ii) permits for development within the flood zone, as defined and regulated by the Town of Monmouth Floodplain Management Ordinance;
- (iii) Annual permits for the operation of junkyards and automobile graveyards.
- (iv) Solid Waste as controlled by the Solid Waste Flow Control Ordinance
- (v) Permits for construction of streets and roads and road and driveway openings as defined and regulated by the Town of Monmouth Street and Road Ordinance.

## **2.4 Development Fees**

- 2.4.1 The Board of Selectmen for the Town of Monmouth is hereby authorized to determine the amount of fees to be assessed for permits, applications and related activities. A fee schedule shall be published and attached to all applications for development under this ordinance, and contained in appendix A.
- 2.4.2 The Board of Selectmen may amend the fee schedule from time to time as deemed necessary and with the concurrence of the Planning Board. A public hearing shall be held prior to the Board vote

to amend the fee schedule. Notice of the public hearing shall be posted in the town office a minimum of fourteen (14) prior to the date of the hearing.

- 2.4.3 The initial fee schedule shall become effective on the day it is enacted. Amended fee schedules shall become effective thirty (30) days after the date of enactment.
- 2.4.4 The purpose of the fees to be collected is so that the applicant will bear the cost of development review. The amount of fees shall be set to reasonably relate to the actual cost of review. Fees shall be set on a sliding scale to reflect the complexity of the review, and such administrative, professional, inspection, and engineering services expected to be incurred. The fee schedule shall include a component to be collected for specialized review, said component to be refunded to the applicant in part or in whole if not expended.
- 2.4.5 The fee schedule may also include impact fees, if developed and adopted in compliance with 30-A MRSA, section 4354.

## **2.5 Violations and Enforcement**

- 2.5.1 It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance.
- 2.5.2 The Code Enforcement Officer in the discharge of official duties, and upon proper identification, shall have authority to enter any building, structure or premises at reasonable hours to inspect for compliance with building permits issued under this Ordinance. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
- 2.5.3 If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including an order to stop work, discontinue the illegal use of land, buildings or structures, remove illegal buildings or structures, or abate nuisance conditions. The notice shall state the rights of appeal. A copy of such notices shall be submitted to the Town Manager and Board of Selectmen and shall be maintained as a permanent record.
- 2.5.4 When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Monmouth.
- 2.5.5 Consent Agreements: The Board of Selectmen may pursue a consent agreement procedure as a means of resolving a violation. The agreement shall include but not be limited to the following provisions:
  - 1. Restoration, removal or proper permitting and a compliance schedule of violating alterations;
  - 2. An appropriate monetary penalty, but not less than \$100;
  - 3. A waiver of appeal; and

4. Payment of attorney fees and costs.

- 2.5.6 Any person, firm or corporation being the owner, agent, or having control or use of any structure or premises, who violates any of the provisions of this Ordinance shall upon conviction be fined in accordance with the provisions of Title 30-A, MRSA, Section 4452. Each day such violation is permitted to exist after notification shall constitute a separate offense. All fines shall be paid to the Town of Monmouth. Such persons shall also be liable for court costs and reasonable attorney fees incurred by the Town.
- 2.5.7 Any person, firm or corporation being the owner, agent, or having control or use of any structure or premises, who fails to obtain a building permit prior to the start of construction, repairs or alterations for which a building permit is required will be assessed a fine equal to the cost of the building permit up to a maximum of \$500 plus the cost of the permit.

**2.6 Code Enforcement Officer Powers and Duties**

- 2.6.1 The Code Enforcement Officer is the enforcement authority for this ordinance. He/she shall be appointed by the Board of Selectmen. During temporary absence or disability of the CEO, the Board of Selectmen shall designate an acting CEO.
- 2.6.2 Powers and Duties: The Code Enforcement Officer shall have the following duties:
- (i) Confer with citizens upon request
  - (ii) Issue building permits;
  - (iii) Advise the planning board regarding technical aspects of applications for which it has review responsibility;
  - (iv) Inspect sites where buildings/use permits have been issued to insure compliance with this Ordinance;
  - (v) Investigate complaints and reported violations;
  - (vi) Enforce the provisions of this Ordinance;
  - (vii.) Keep written inspections reports and thorough records;
  - (viii.) Participate in appeals procedures;
  - (ix.) Appear in court when necessary;
  - (x.) Attend meetings of the Planning Board and;
  - (xi.) Advise the Planning Board on matters relating to applications before it.

**2.7 Planning Board Powers and Duties**

- 2.7.1 The Planning Board is authorized to review and decide upon applications for approval of subdivision, non-residential developments, and multifamily residential projects as provided in chapter 5, and earth moving permits, as provided for in chapter 4. At the request of the Code Enforcement Officer, the Planning Board may advise the Code Enforcement Officer as to the interpretation or applicability of the ordinance.
- 2.7.2 The Planning Board shall from time to time review and make recommendations to the Board of Selectmen concerning the operation of this ordinance, proposed amendments or fees to be collected.

- 2.7.3 The Planning Board is authorized to adopt such rules and procedures as will contribute to the efficient administration of their duties under this ordinance.

## **2.8 Board of Appeals Powers and Duties**

- 2.8.1 The Board of Appeals, created in accordance with the provisions of State law, shall hear and decide administrative and variance appeals.

### **2.8.2 Administrative Appeals:**

- 2.8.2.1 The Board of Appeals may hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer in the enforcement or administration of this Ordinance.
- 2.8.2.2 When errors of administrative procedure or interpretation are found by the Board of Appeals, the case shall be remanded to the Code Enforcement Officer for reconsideration consistent with the Board of Appeals decision.

### **2.8.3 Variance Appeals**

- 2.8.3.1 The Board of Appeals may permit variances only under the following conditions:
- (i) Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
  - (ii) Except as provided in subsections below, the Board may grant a variance only when it finds that the strict application of the terms of this Ordinance would result in undue hardship, the board must find that the applicant has met all 4 of the following conditions:
    - a. The land in question cannot yield a reasonable return unless a variance is granted,
    - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood,
    - c. The granting of a variance will not alter the essential character of the locality; and
    - d. The hardship is not the result of action taken by the applicant or a prior owner.
- 2.8.3.2 The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this paragraph, a disability has the same meaning as a physical or mental handicap under Title 5, M.R.S.A, Section 4553.
- 2.8.3.3 The Board may grant a setback variance for a single-family dwelling that is the primary year-round residence of the petitioner only when it finds that the strict application of the terms of this Ordinance would result in undue hardship, as stated below:
- a. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - b. The granting of a variance will not alter the essential character of the locality,

- c. The hardship is not the result of action taken by the applicant or a prior owner,
- d. The granting of a variance will not substantially reduce or impair the use of abutting property, and
- e. The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance under this subsection may not exceed 20% of a setback requirement nor cause the dwelling to exceed the maximum lot coverage.

- 2.8.3.4 The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

#### 2.8.4 Appeals Procedure

- 2.8.4.1 An administrative or variance appeal may be taken to the Board of Appeals by an applicant, owner, or aggrieved party or the Town of Monmouth through the Selectmen from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

- 2.8.4.2 Any applicant, owner, or aggrieved party who participated as a party during the proceedings before the Board of Appeals or the Town of Monmouth through the Selectmen may take an appeal to Superior Court in accordance with State laws within thirty (30) days from the date of any decision of the Board of Appeals or as otherwise allowed by the Superior Court.

#### 2.8.5 Appeals from decisions of the Planning Board

The Board of Appeals shall not have the authority to review actions of the Planning Board to approve or deny an application for development approval. Appeals from decisions of the Planning Board shall be made directly to the Superior Court in accordance with section 5.2.3 of this ordinance.

## **3: Non-Conforming**

### **3.1 Non-conformance**

It is the intent of this Ordinance to promote the fair and equal application of land use regulations. However, nonconforming conditions, buildings or structures existing or permitted prior to the effective date of this ordinance shall be allowed to continue or be completed, subject to the requirements set forth in this section.

### **3.2 General Requirements**

- 3.2.1 Transfer of Ownership: Nonconforming buildings, structures and lots may be transferred, and the new owner may continue to use the nonconforming building, structure or lot, subject to the provisions of this Ordinance.



3.2.1.1 Repair and Maintenance: This Ordinance allows the normal upkeep and maintenance of nonconforming buildings or structures, including repairs or renovations which do not involve expansion of the nonconforming building or structure, and such other changes as federal, state, or local building and safety codes may require.

### 3.2.2 Nonconforming Buildings and Structures

3.2.2.1 Expansions: A nonconforming building or structure may be added to or expanded, if such addition or expansion does not increase the nonconformity of the building or structure.

3.2.2.2 Relocation: A nonconforming building or structure may be relocated within the boundaries of the parcel on which it is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Code Enforcement Officer, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine *Subsurface Wastewater Disposal Rules* (“Rules”), or that a new system can be installed in compliance with the law and said Rules. In no case shall a building or structure be relocated in a manner that causes the building or structure to be more nonconforming.

3.2.2.2.1 In determining whether the building or structure relocation meets the setback to the greatest practical extent, the Code Enforcement Officer shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the vegetation to be removed to accomplish the relocation.

3.2.2.3 Reconstruction or Replacement: Any nonconforming building or structure which is located less than the required setback and which is removed, damaged, or destroyed may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said removal, damage, or destruction and provided that such reconstruction or replacement is in compliance with setback requirements to the greatest practical extent as determined by the Code Enforcement Officer. In no case shall a building or structure be reconstructed or replaced so as to increase its nonconformity.

3.2.2.4 Manufactured Housing (Mobile Homes): Older Manufactured Housing not constructed according to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC, Chapter '70 or Section 4.4 of this ordinance, shall be considered nonconforming and may continue to be maintained, repaired, and improved in accordance with this Ordinance. A non-conforming Manufactured Housing may not be replaced by another Manufactured Housing that does not meet the standards of section 4.4. If a Manufactured Housing is non-conforming with respect to setbacks, its replacement shall be sited to meet the setbacks to the greatest practical extent.

### 3.2.3 Nonconforming Lots

- 3.2.3.1 Individual Nonconforming Lots: A nonconforming lot of record existing on or before the effective date of this ordinance, may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership and all provisions of this Ordinance except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.
- 3.2.3.2 Contiguous Built Lots: If two or more contiguous lots or parcels were in the same single or joint ownership of record as of the effective date of this ordinance, if all or part of the lots do not meet the dimensional requirements of this ordinance, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that each lot separately shall meet the requirements of the *Subsurface Wastewater Disposal Rules*.
- 3.2.3.3 Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels were in the same single or joint ownership of record as of the effective date of this ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance, and if one or more of the lots are vacant or contain no principal structure the lots are hereby combined to the extent necessary to meet the dimensional requirements, unless the lots are part of an approved subdivision plan.
- 3.2.3.4 Multiple Principal Structures or Uses on Single Lots of Record: If two or more principal buildings, structures or uses exist on a single lot of record, the lot shall not be divided in a manner that creates a nonconforming lot or causes a nonconforming lot to become more nonconforming.
- 3.2.3.5 Non-conforming Lots within a Manufactured Housing Park: Nonconforming lots in an existing Manufactured Housing park may continue to be used provided that existing nonconforming setbacks are not further reduced. When a Manufactured Housing on a non-conforming park lot is replaced, setbacks shall be met to the greatest practical extent.

### **3.3 Non-conforming Manufactured Housing**

- 3.3.1 A manufactured home not constructed according to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC, Chapter 70, or Section 4.4 of this ordinance, which was legally sited within the Town of Monmouth as of August 4, 1988, may be moved to another location within the Town provided that all other applicable requirements of this and other ordinances of the Town are met.
- 3.3.2 A manufactured home not constructed according to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC, Chapter 70, or Section 4.4 of this ordinance may be used as temporary housing during the permitted construction period for a new single family dwelling under the following conditions:
- (i) The Manufactured Housing is located on the same lot as the dwelling under construction;
  - (ii) The approved water supply and sewage disposal systems (or hook-ups) for the lot shall be capable of serving first the temporary Manufactured Housing and finally the permanent



- dwelling and shall be installed prior to the placement of the Manufactured Housing on the lot;
- (iii) The Manufactured Housing shall be placed so as to meet yard setback requirements to the maximum extent possible while allowing space for construction;
  - (vi) The Manufactured Housing shall be occupied only by the owner of the permanent building under construction; and
  - (vii) The Manufactured Housing shall be removed from the lot within ninety (90) days of the date of issuance of an occupancy permit for the permanent dwelling.

## **4: General Site Requirements for Construction**

### **4.1 Dimensional Requirements**

All new residential buildings and commercial structures shall be placed on lots in conformance with the standards of this Chapter.

#### **4.1.1 Minimum Lot Area:**

- 4.1.1.1 Minimum required size for a new lot:
  - 15,000 square feet if using the public sewer system
  - 40,000 square feet if using private waste disposal
- 4.1.1.2 The planning board is authorized to modify minimum lot size requirements for the purpose of approving specified residential subdivisions in accordance with the provisions of section 5.8.
  - 4.1.1.2.1 Minimum required size for a new lot within a Manufactured Housing park:
    - 6,500 square feet if the park will be served by public sewer,
    - 12,000 square feet for additions of lots to a park served by a central subsurface waste disposal system.
  - 4.1.1.2.2 Additional lot area shall be required if a building will contain three (3) or more dwelling units, as specified in sections 6.8.3.2 and 6.8.4.1 of this ordinance. In addition, if a lot will accommodate two or more principal buildings, it shall be designed and structures placed so as to allow future division into conforming lots. Lots shall be configured to provide adequate minimum lot size and frontage for each building, and buildings separated so as to provide adequate side setbacks should a new boundary be created, unless established as a condominium form of ownership.

#### **4.1.2 Required Street Frontage**

- 4.1.2.1 For new lots that will front on an existing road:
  - 75 feet minimum street frontage if the lot is served by the public sewer,
  - 200 feet minimum street frontage if the lot is served by private waste disposal.

- 4.1.2.2 For new lots that will front on a road proposed to be built to the standards of the Town of Monmouth Streets and Ways Ordinance:  
75 feet minimum frontage if the lot is served by public sewer.  
150 feet minimum frontage if the lot is served by private waste disposal.
- 4.1.2.3 Lots that do not have frontage meeting the requirements of sections 4.1.2.1 or 4.1.2.2 may be built on only if they have a minimum of two hundred (200) feet of frontage on a right-of-way that has been surveyed, a legal description prepared, and appurtenant easement granted to the lot. If the right-of-way is deeded in fee, it shall not have the effect of reducing the parent lot to a nonconforming size or frontage. This section shall not apply to new lots requiring review as a subdivision.
- 4.1.2.4 Lots within a manufactured home park, the minimum frontage shall be fifty (50) feet on streets and under the management of the park owner.

#### 4.1.3 Required Building Setbacks

- 4.1.3.1 All setbacks and separation distances shall be measured from the nearest corner of the building to the property line.
- 4.1.3.2 Minimum front setback from the edge of a right-of-way:  
35 feet if the lot is served by public sewer,  
50 feet if the lot is served by private waste disposal, except as provided below.
  - 4.1.3.2.1 Section Deleted
  - 4.1.3.2.2 Within a Manufactured Housing park, the minimum setback from an internal street shall be twenty (20) feet.
  - 4.1.3.2.3 On lots served by public sewer, where adjoining, pre-existing buildings do not meet the required setback from the right-of-way, a new building may be set back a distance equal to the larger of the setbacks of the two adjoining buildings.
  - 4.1.3.2.4 On a lot fronting on two or more streets or rights-of-way, the front setback shall be enforced only from the street used for assigning street numbering.
- 4.1.3.3 Where the edge of the right-of-way of a town road cannot be definitely established, the required setback distance shall be measured from the center line of the road, with twenty five (25) feet added to the required setback to accommodate the presumed width of the right-of-way.
- 4.1.3.4 Minimum side and rear setback  
10 feet if the lot is served by public sewer,  
20 feet if the lot is served by private waste disposal,

Except as provided below.

4.1.3.4.1 Minimum side and rear setback for structures less than or equal to two hundred square feet shall be six (6) feet.

4.1.3.4.2 All new multi-family buildings shall be set back from side and rear lot lines a distance equal to the height of the building.

#### 4.1.4 Lot Coverage

4.1.4.1 On residential and mixed use lots served by sub surface waste disposal, no more than thirty (30) percent of the lot area may be covered by buildings and other impervious surface.

4.1.4.2 All other lots shall not exceed fifty (50) percent of the lot area covered by buildings and other impervious surface.

#### 4.1.5 Building Height

4.1.5.1 The maximum height of a new single-family or two-family residential building shall be twenty (20) feet, as measured from the average ground elevation where it abuts the foundation to the eave line of the uppermost roof.

4.1.5.2 The maximum height of all other buildings is thirty five (35) feet, except that the maximum height shall not apply to buildings which are used solely for agricultural purposes or the storage or distribution of liquids.

#### 4.1.6 Flag Lots

##### 4.1.6.1 Dimensional Standards

Minimum corridor width shall be 30 feet and not included in frontage if owned by flag lot.

Corridor frontage on a public road shall be 30 feet minimum.

Lot width shall be 200 feet minimum excluding access without public sewer.

Lot area shall be 40,000 square feet without public sewer not including any portion of the access corridor.

Remainder of lot shall meet minimum lot size standards of section 4.1

Second or subsequent divisions must meet the standards for Town of Monmouth Road Ordinance for access and utilities. (See Current Street and Road Ordinance.)

The Access Corridor shall be either fee ownership of a portion of the back lot or an appurtenant easement for the benefit of the back lot.

##### 4.1.6.2 Construction Standards for ingress and egress.

Minimum travel way width is 20 feet

Must be cleared and grubbed to mineral earth

Provide a base of 18" gravel with a 6 inch gravel wearing surface

Provide adequate drainage

Provide a "T" type turn at the end of the access corridor for emergency vehicles.

#### 4.1.7 Unbuilt Lots of Record

A lot of record shown on a recorded subdivision plan or described in a record instrument with a date prior to June 30, 1974 not situated within the portion of the Town of Monmouth served by the Monmouth Sanitary District or the Monmouth Water Association, and being undeveloped shall have the following minimum dimensional standards apply.

##### 4.1.7.1 Dimensional Standards

Minimum road setback – 15 Feet

Minimum side yard setback – 10 Feet

Minimum rear yard setback – 10 Feet

## **5: Building Permit Requirements**

### **5.1 Permits Required**

#### 5.1.1 Building Permits

No person firm, corporation or other legal entity shall begin any new construction; make structural changes to an existing building or structure; or place a new building or structure in Monmouth without first obtaining a building permit, except where work is limited to ordinary maintenance or repair of buildings or structures or construction of an accessory structure not exceeding two hundred (200) square feet in floor area. Failure to obtain required permits before start of construction shall incur a double fee.

#### 5.1.2 Earth Moving

Any Earth moving may be subject to Maine erosion and sedimentation control law 38MRSA Sect 420-C. No person firm, corporation or other legal entity shall engage in any earth moving activity without first obtaining a permit, except (1) earth moving of less than 50 cubic yards not within shoreland districts, (2) earth moving within state permitted or grand-fathered pits, (3) earthmoving in conjunction with routine driveway and road maintenance, ditching and/or culvert replacement and (4) earthmoving in conjunction with agricultural and gardening tillage. Permits shall be issued as follows:

- i. By the Code Enforcement Officer
  - a. Within shoreland zoning areas, the Code Enforcement Officer may issue permits to move less than 10 cubic yards in Resource Protection and between 10 and 25 yards in other areas.
  - b. Outside shoreland zoning areas, the Code Enforcement Officer may issue permits to move 50 cubic yards or more within a 12 month period.
- ii. By the Planning Board
  - a. In Resource Protection areas the Planning Board may issue a conditional use permit to move 10 cubic yards or more.
  - b. In other shoreland zoning areas the Planning Board may issue a conditional use permit to move more than 25 cubic yards.
- iii Applicable standards of review for permits within areas covered by Shoreland Zoning and Resource Protection may be found in the Monmouth Shoreland Zoning Ordinance. Permit

requests for areas outside Shoreland Zoning and Resource Protection shall meet the applicable General Development Standards in 6.7.

5.1.3 Driveway and Road Opening Permits

No person firm, corporation or other legal entity shall create or establish a new driveway or road entrance without first obtaining a permit from the Public Works Director under the Town of Monmouth Street and Road Ordinance. The Public Works Director shall inspect the work and shall refer violations of the conditions of the permit or the failure to obtain a permit to the Code Enforcement officer for enforcement action.

5.2 **Permit Application and Review**

5.2.1 Where the code enforcement officer cannot determine the setback for proposed construction, a survey may be required.

5.2.2 Application Forms: An applicant for a building permit shall submit to the Code Enforcement Officer (CEO) a written application on a form specified by the Town, accompanied by the appropriate fee and construction drawings and plans in sufficient detail that the CEO may evaluate the work being proposed. Site plans are required where new or expanded buildings are proposed. The site plan shall show the actual shape and dimensions of the lot, the location and size of existing and proposed structures and their setbacks from lot lines, and such other information as may be necessary to provide for the administration and enforcement of this Ordinance.

5.2.3 CEO Review Procedures: The CEO shall note upon each application the date of its receipt. The CEO shall review the application, determine whether it is in conformance with the criteria in this Ordinance, and issue or deny the building permit within 10 days of receipt. If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing.

5.2.4 Review Criteria: The CEO shall issue a building permit upon finding that the following criteria have been met:

- i. The building will be sited on the lot in conformance with the standards of Chapter 4 of this ordinance.
- ii. The building will be constructed in compliance with the Maine Uniform Building and Energy Code, as enacted at 10 M.R.S.A. 9721 et seq. and incorporated by reference in this Ordinance. *NOTE: Enforcement of the Maine Uniform Building and Energy Code is a state mandate. If the mandate is repealed at any time following the effective date of this ordinance, this criteria shall not be applied.*
- iii. Manufactured housing shall be constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC, Chapter 70, except as provided in section 5.4 of this ordinance.
- iv. The applicant has obtained all necessary approvals, permits, and licenses required by state or local laws and ordinances, including but not limited to subdivision or commercial development approval, shoreland zoning permits, and plumbing or subsurface wastewater disposal permit or sewer permit as applicable.
- v. If the building is a Manufactured Housing, evidence of payment of state sales tax, in accordance with Title 30-A MRSA, Section 4358, Subsection 4.

#### 5.2.5 Permit Status:

- 5.2.5.1 Expiration: A building permit shall lapse and become void if work is not substantially started within one year of the date of the permit and substantially completed within one year of the start of construction. A substantial start must include installation of a subsurface disposal system or the foundation for new construction.
- 5.2.5.2 Renewal: A permit which has been substantially started may be extended and renewed annually by the CEO, upon submission of a request for extension and an additional \$25 fee.
- 5.2.5.3 Suspension: A permit upon which no work has been done may be suspended by the CEO upon the request of the permit holder, provided that the request is made before expiration of the permit. No refund shall be made of permit fees, and the permit may be reinstated at any time at the discretion of the CEO.
- 5.2.5.4 Vacation: A permit upon which no work has been done may be vacated upon the request of the permit holder, provided the request is made before the expiration of the permit. A refund of permit fees may be requested; however, the CEO shall withhold a portion of the refund to cover administrative expenses, not to exceed \$100 (one hundred dollars). Permits which have been vacated do not have any standing, and a new permit must be applied for prior to construction.
- 5.2.5.5 Completion of Work: The building permit card must be returned to the Town Office at the completion of work. That will start the Certificate of Occupancy procedure if needed. If the building permit card is lost, contact the CEO for a completion of work form.

#### 5.2.6 Inspections

- 5.2.6.1 The CEO shall be authorized to schedule and conduct inspections of the construction of the building, in coordination with the builder. It is the responsibility of the builder to notify the CEO of availability of the site for inspection. If an inspection cannot be conducted within two (2) business days of the completion of a pre-determined phase of construction, the builder shall not proceed except at his own risk. [Ed. Note: Section R109.4 of the IRC states: "Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official." The section has no reference to a time period in any context.]
- 5.2.6.2 If the CEO finds during inspection that provisions of this ordinance or the related construction code have apparently been violated, he shall issue an order to stop work until and except for work to rectify the violation. If the CEO becomes aware of work that has been completed without a required inspection, he shall issue an order to stop work until the inspection can be completed. If a stop work order has been in effect for sixty (60) days, the CEO may at his discretion revoke the building permit.

### 5.3 Occupancy Permit

No home or business subject to this ordinance shall be occupied except upon the issuance of an occupancy permit issued by the Code Enforcement Officer. The CEO shall issue an occupancy permit upon request following a final inspection that demonstrates that the building is safe and sanitary, and does not present a nuisance to neighboring properties. Finished flooring, trim and exterior siding are not necessary for an occupancy permit.

#### **5.4 Design and Safety Standards for Older Manufactured Housing**

These standards shall apply to all manufactured housing built before June 15, 1976, or not built according to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USC, Chapter 70.

5.4.1 All manufactured housing shall have a pitched, shingled roof and siding that is in conformance with the residential buildings in the vicinity.

5.4.2 All manufactured housing shall be placed upon a permanent foundation, or a concrete (or equivalent material) pad and continuous skirting around the base of the home.

##### **5.4.3 Means of Egress**

4.4.3.1 Homes shall have a minimum of two exterior doors not less than 12 feet from each other as measured in any straight line direction regardless of the length of the travel between doors. One of the required exit doors must be accessible from the doorway of each bedroom without traveling more than 35 feet.

5.4.3.2 Required egress doors shall not be located where a lockable interior door must be used in order to exit.

##### **5.4.4 Fire Detection Equipment**

5.4.4.1 At least one smoke detector (which may be a single station alarm device) shall be installed in the home in each of the following locations:

- (i) A smoke detector shall be installed on any wall in the hallway or space communicating with each bedroom area between the living area and the first bedroom door unless a door separates the living area from that bedroom area, in which case the detector shall be installed on the living area side as close to the door as practical.
- (ii) Homes having bedroom areas separated by any one or combination of common areas such as kitchen, dining room, living room or family room (but not a bathroom or utility room) shall have at least one detector protecting each bedroom area.

5.4.4.2 When located in hallways the detector shall be between the return air intake and the living area.

5.4.4.3 The smoke detector shall not be placed in a location which impairs its effectiveness.

5.4.4.4 Smoke, Carbon Monoxide, and Heat detectors shall be labeled as conforming to the current requirements of Underwriters Laboratory Standards.



5.4.4.5 Each smoke detector shall be installed in accordance with its listing. The top of the detector shall be located on a wall 4 inches to 12 inches below the ceiling. However, when a detector is mounted on an interior wall below a sloping ceiling, it shall be located 4 inches to 12 inches below the intersection on the connecting exterior wall and the sloping ceiling (cathedral ceiling). The required detector(s) shall be attached to an electrical outlet box and the detector connected by permanent wiring method into a general electrical circuit. There shall be no switches in the circuit to the detector between the overcurrent protection device protecting the branch circuit and the detector. The smoke detector shall not be placed on the same branch circuit or any circuit protected by a ground fault circuit interrupter

5.4.5 The requirements of this subsection shall not apply to manufactured housing, house trailers and Manufactured Housings owned by dealers as stock in trade, said units remaining unoccupied.

## **6: Development Review**

### **6.1 Approval Required Prior to Development**

This chapter sets out the procedures and requirements for approval by the Town of Monmouth of the following types of development:

#### **6.1.1 Subdivisions**

The Planning Board shall review and decide upon all applications for subdivision plan approval.

6.1.1.1 A subdivision shall be as defined in 30-A M.R.S.A sec. 4401.

6.1.1.2 No person, firm, corporation or other legal entity may sell, lease, develop, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land or unit in a subdivision which has not been approved in accordance with this ordinance and recorded in the Kennebec County Registry of Deeds.

#### **6.1.2 Non-residential and Multi-family Development**

The Planning Board or Code Enforcement Officer shall review and decide upon all applications for approval of non-residential and multi-family development.

6.1.2.1 A development subject to Code Enforcement Officer Review is defined as follows:

- A. The construction of any new commercial, multi-family, industrial, institutional, fraternal, municipal, recreational or utility building or structure consisting of less than (5,000) square feet of gross floor area with up to (2,000) square feet of parking area associated therewith;
- B. the establishment or expansion of parking areas by (1,000) to (2,000) square feet in area;
- C. The conversion of an existing building from a residential to non-residential use, where the converted area will not exceed (2,000) square feet of gross floor area, including establishment of home-based businesses;



- D. Business to single family residential.
- E. The addition of a single dwelling unit to an existing residential use;
- F. The expansion of an existing non-residential building, structure or use which expands the gross floor area, seating capacity, or outdoor storage area by less than (1,000) square feet or 25 percent (whichever is lesser).
- G. The resumption of conforming non-residential uses which have been discontinued for a period of two or more years.

6.1.2.1.1 A development review by the Code Enforcement Officer is intended to be an expedited version of Planning Board review. The procedures for Planning Board review, as specified in section 6.2.2, shall be followed, except as follows:

- i. The CEO is authorized to waive submission requirements prior to finding of a complete application. Only two (2) copies of application materials shall be required;
- ii. No public hearing shall be held;
- iii. A decision on the application shall be made within ten (10) working days of the receipt of all requested materials from the applicant.
- iv. An applicant who is aggrieved by the decision of the CEO may request that the application be reviewed *de novo* by the Planning Board.
- v. where factors such as traffic, site conditions or proposed use requires more intensive review the CEO may refer the permit request to the planning board

6.1.2.2 A development subject to Planning Board review is defined as follows:

- A. The construction of any new commercial, multi-family, industrial, institutional, fraternal, municipal, recreational or utility building or structure which exceeds five thousand (5,000) square feet of gross floor area or fifty (50) feet in height;
- B. The conversion of an existing building from a residential to multi-family or non-residential use, where the converted area would exceed two thousand (2,000) square feet of gross floor area or result in the addition of more than one dwelling unit;
- C. The change of an existing non-residential building from one type of use to another type of non-residential use when the activities would alter existing traffic patterns, would involve the sale of goods not normally associated with the previous use, or would employ new materials and/or processes;
- D. The expansion of an existing non-residential building, structure, or use which increases the gross floor area, seating capacity, or outdoor storage area by more than one thousand (1,000) square feet or 25% (whichever is lesser);
- E. Any use which involves the establishment of a new parking area exceeding (2,000) square feet or the expansion of a parking area of more than one thousand (1,000) square feet in area; and

6.1.2.3 No person, firm, corporation or other legal entity may sell, lease, develop, occupy, or convey for consideration, any building or structure which is subject to review under this section and which has not been approved in accordance with this ordinance

6.1.3 Procedures for reviewing, recording and hearing development applications shall be in accordance with the provisions of this Ordinance and, if the development is a subdivision, with 30-A, MRSA, Section 4403, as amended.

## **6.2 Procedure for Review and Approval**

These procedures shall apply to all applications for Development approval:

### **6.2.1 Voluntary Pre-Application Meeting**

- 6.2.1.1 Applicants are encouraged to submit to the Board a sketch plan of the proposed development for informal discussion. The pre-application meeting shall not cause the plan to be a pending application or result in the applicant acquiring vested rights.
- 6.2.1.2 The purpose of the pre-application meeting is to allow the applicant to discuss the application process and requirements with the Board. Topics which should be addressed during this meeting include, but shall not be limited to:
  - a) The proposed use(s) of the land or buildings to be developed, including whether the property is subject to review as a subdivision under 30-A, M.R.S.A., sec. 4401 et seq.
  - b) Whether the application is for a non-conventional subdivision or specialized commercial use subject to additional requirements under section 6.8;
  - c) Any required submission items for which the applicant will be requesting waivers;
  - d) Additional submission items which may be required, such as high intensity soil survey, traffic study, or other specialized studies; and
  - e) Requirements for additional state, federal, or local permits.
- 6.2.1.3 Should the applicant be in apparent violation of the provisions of a previously approved development plan within the Town of Monmouth, the board shall inform him/her that no additional applications shall be considered for approval until the violation is resolved.

### **6.2.2 Application and Review Procedure**

- 6.2.2.1 In order for an application and plan to be considered by the Planning Board at its regular monthly meeting, nine (9) copies of the application, including all elements required under section 6.4, below, must be submitted to the Town Office not less than five (5) working days prior to such Planning Board meeting, together with the required application and technical review fees. The Planning Board may choose to accept an electronic submission in lieu of some of the required copies.
- 6.2.2.2 Upon receipt of the application materials, the town office shall issue the applicant a dated receipt, and shall inform the Chairman of the Planning Board and the Code Enforcement Officer that an application has been received.
- 6.2.2.3 The application shall be placed on the next Planning Board agenda for a review for completeness.
- 6.2.2.4 After consideration of the application submitted for review, the Planning Board shall notify the applicant in writing either that the application is complete, or if it is incomplete, the specific additional material needed to make a complete plan and application.

6.2.2.5 Upon making a determination that an application is complete, the Planning Board shall . . .

- a) schedule an on-site inspection of the property, which will be jointly attended by the applicant or a duly authorized representative and by at least two members of the Planning Board;
- b) determine whether to hold a public hearing on the application;
- c) within seven (7) days of its determination, notify by certified mail all owners of property located within five hundred (500) feet of the subject property, and provide notice to the Superintendent of Schools, Director of Public Works, Fire Chief and Police Chief; if the development will be using the public water system, the Monmouth Water Association; if the development will be using the public sewerage facilities, the Monmouth Sanitary District. The notice will include a brief description of the property and proposed activity, and the time and place of any public hearing to be held;
- d) if the subject property is located within five hundred (500) feet of the boundary of a neighboring town, notify the respective town clerk. If the subject property crosses the town boundary, the Board shall offer joint consideration of the application with the neighboring town.

6.2.2.6 If the Board decides to hold a public hearing, it shall hold the hearing within forty (40) days of its determination of the complete application. The Town shall publish notice of the date, time, and place of the hearing at least two (2) times in a newspaper of general circulation within Monmouth, the date of the first publication to be at least seven (7) days prior to the hearing.

6.2.2.8 The Board shall make written findings of fact and conclusions on whether the application complies with the criteria for approval, as expressed in section 6.3, below. Based on its findings with regard to meeting the criteria, the Board will approve, approve with conditions, or deny the application,

The Board shall act on the application within forty (40) days of the public hearing, or within sixty (60) days of determination of a complete application if no hearing is held, or within such other time limit as may be mutually agreed to by the Board and the applicant.

6.2.2.9 Conditions of approval may include a requirement that the applicant provide specific additional information for review and consideration by the Board, including but not limited to: required state and federal permits, final plans, cost estimates and performance guarantees for public improvements, and offers of conveyance for any land, easements, or improvements.

If the Board requires additional information, final approval shall be considered pending until the Board is satisfied that the information is provided. Information required must be submitted within twelve (12) months of the date of conditional approval. The Board shall

not sign the plan, and the applicant shall not commence works or offer to convey lots within a subdivision until final approval is granted.

6.2.2.10 Final approval of the application shall be attested on two (2) Mylar's and on two (2) copies of the plan by the signatures of a majority of the members of the Board.

6.2.2.11 Any subdivision plan not recorded in the Kennebec County Registry of Deeds within thirty (30) days of the date the plan is approved and signed by the Board shall become null and void. All dedications of easement, development rights, or other legal documents required to be recorded, must be recorded prior to the conveyance, leasing or occupation of any lot.

### 6.2.3 Appeals

Any party aggrieved by a decision of the planning board may appeal the decision to Kennebec County Superior Court. Such appeal must be filed within thirty (30) days of the written notice of the planning board's decision.

### 6.2.4 Revisions and Amendments to Approved Plans

6.2.4.1 Except as provided in section 6.2.4.3.1 below, an applicant for a revision to a previously approved plan shall request to be placed on the Boards agenda at least ten (10) working days prior to a scheduled meeting of the Planning Board.

6.2.4.2 If the revision involves the creation of additional subdivision lots or additional building area to be occupied, the procedures for application approval specified in sections 6.2.1 and 6.2.2, above, shall be followed.

The applicant shall not be required to submit application materials beyond those which are necessary to consider the new lots or building area being created. The applicant should present a list of proposed submissions for review and discussion at the pre-application meeting.

The Planning Boards scope of review shall be limited to those portions of the plan which are proposed to be changed. This shall not be construed to limit the board's authority to consider overall site impacts of the changes.

6.2.4.3 If the revision involves only modifications of the approved plan, without the creation of additional lots or building area, the following procedures shall be followed:

6.2.4.3.1 If a proposed change is related to construction of improvements and is the result of conditions in the field, such as the moving of a building envelope, or the relocation of infrastructure, the Code Enforcement Officer is authorized to approve such changes. The Code Enforcement Officer, upon approval, shall provide written notice of his/her actions to the Board and attach a record of his/her action to the approved plan.

6.2.4.3.2 If the proposed change will require a change to an existing recorded plan, the Board shall within thirty (30) days of its first meeting to review the change, approve or deny

the application for change. Upon approval, the Board shall sign a new final plan, as provided in section 6.2.2.10, above.

Except as provided in section 6.2.3.3.1, above, a revised plan shall indicate that it is a revision to a previously approved and recorded plan and shall show the assigned registry reference by which the original plan is recorded at the Kennebec County Registry of Deeds.

### **6.3 Review Criteria**

Based on its findings of fact, the reviewing authority shall approve a plan which shows that it will meet all of the criteria listed in this section. It shall approve a plan with conditions whenever it finds that the imposition of conditions will be sufficient to meet the criteria. It shall deny a plan which does not show that it will meet the criteria.

The applicant has the burden of presenting credible evidence that his or her application should be approved. Failure to provide sufficient evidence of compliance with the criteria shall be grounds for denial.

6.3.1 A plan which is classified as a subdivision, in accordance with section 6.1.1, above, shall demonstrate compliance with all of the criteria listed below.

- A. Local planning:** The proposed development is in conformance with all duly adopted Town of Monmouth ordinances and regulations and the Comprehensive Plan.
- B. Water and air pollution:** The proposed development will not result in undue water or air pollution on- or off-site. In making this determination the Board shall at least consider: the elevation of land above sea level and its relation to the flood plains; the nature of soils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resource rules and regulations.
- C. Water availability:** The proposed development has sufficient quantity and quality of water available for the reasonably foreseeable needs of the project including, but not limited to, potable water and fire control water.
- D. Water supply:** The proposed development will not cause an unreasonable burden on an existing water supply, including private ground water or the Monmouth Water Association, whichever is to be utilized. This shall be interpreted to mean that the subdivider will be responsible for all costs of engineering and installation of public improvements necessary for extension of public water supply.
- E. Ground water:** The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water, both on and off site.

- F. Surface water:** Whenever situated, in whole or in part, within the direct watershed of a pond or lake or within a shoreland zone, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
- G. Freshwater wetlands:** The plans for the proposed development have identified all freshwater wetlands, regardless of size, within the area to be subdivided or developed.
- H. Rivers, streams and brooks:** The plans for the proposed development have identified any river, stream or brook within or abutting it.
- I. Flood plains:** If the proposed development, or any part of it, is in a flood-prone area, based on the FEMA Flood Insurance Rate Maps for the Town of Monmouth, the plans for the proposed development provide that any principal structures will be constructed with their lowest floor, including the basement, at least one foot above the 100 year flood elevation.
- J. Soil erosion:** The proposed development will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition results, with or without on or off the site.
- K. Storm water:** The proposed development will provide for adequate storm water management.
- L. Traffic conditions:** The proposed development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed. This shall be interpreted to mean that the applicant will be responsible for all costs of engineering and installation of public improvements necessary for satisfactory access to and functioning of the public road system.
- M. Sewage waste disposal:** The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on the Monmouth Sanitary Treatment System if it is utilized. This shall be interpreted to mean that the applicant will be responsible for all costs of engineering and installation of public improvements necessary for connection to the sanitary treatment system.
- N. Solid waste disposal:** The proposed development has made adequate provision for solid waste disposal and will not cause an unreasonable burden on the ability of the town to dispose of solid waste if town services are to be utilized.
- O. Aesthetic, cultural and natural values:** The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat, or rare and irreplaceable natural areas or any public right for physical or visual access to the shoreline.
- P. Financial and technical capacity:** The applicant has adequate financial and technical capacity to meet these standards, including the maintenance of common areas and facilities (including but not limited to water and sewer utilities and roads), until such maintenance is adequately provided by a management entity, acceptance by the Town, or other mechanism acceptable to the Planning Board.



- Q. Lot Design:** If any lots within the subdivision will have frontage on any river, stream, brook, or great pond, none of the lots will have a ratio of lot depth to shore frontage in excess of 5 to 1.
- R. Phosphorous Management:** The long-term cumulative effects of the proposed development will not unreasonably increase the concentration of phosphorous within a great pond over the life of the proposed development.
- S. Impact on Adjoining Municipality:** If a proposed development crosses town boundaries, it will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in the adjoining municipality.

6.3.2 A plan which is classified as a non-residential development, in accordance with section 6.1.2, above, shall demonstrate compliance with all of the criteria listed in section 6.3.1, above, with the exception of **Q. “Lot Design.”** In addition, a non-residential development shall demonstrate compliance with all of the criteria listed below.

- A. Exterior Fixtures:** The plan will show that exterior fixtures such as signs, lighting, and fencing, will not have an adverse impact on public access to the property, and will not constitute hazards to vehicles and pedestrians, or nuisances to abutting properties.
- B. Vegetation and Landscape:** The proposed development will provide for the retention of contours and vegetation in their natural state insofar as practicable, by minimizing tree and soil removal and grade changes, and for the restoration of landscape through grading and re-vegetation of disturbed areas, and planting of buffers.
- C. Transportation Impacts:** The proposed development will accommodate the anticipated level of usage without undue adverse impact on public highways, through the provision of safe and adequate access, internal circulation, and parking for all forms of transportation. This shall be interpreted to mean that the applicant will be responsible for all costs of engineering and installation of public improvements necessary for satisfactory access to the property.

## 6.4 Submission Requirements

In order to be judged complete, an application shall consist of a written application on a form designated for the purpose, a development plan that meets the requirements of the following paragraphs, and all fees, attachments, or additional information required under this ordinance.

The required submissions for an application are intended to be appropriate for the type, size and complexity of the proposed development. The requirements of section 6.4.1, below, apply to all applications. The requirements of section 6.4.2, below, apply to only larger applications. The requirements of section 6.4.3, below, apply only to special cases and circumstances. Application requirements may be waived at the discretion of the Planning Board under the provisions of section 6.4.4, below.

### 6.4.1 Required of all Applications

- 6.4.1.1 An Application for Development Approval, available from the Town of Monmouth.
- 6.4.1.2 A check or other form of payment in the amount of the Application Fee, as provided in section 2.4 of this ordinance.
- 6.4.1.3 A check or other form of payment for the Technical Review Fee, as provided in section 2.4.4 of this ordinance.
- 6.4.1.4 A subdivision or site plan, consisting of two (2) copies on sheets not larger than 24" x 36" each, and additional copies identical in detail but reduced to 11" x 17". The scale of the plan shall be adequate to allow all text and graphics to be legible on the 24" x 36" form.

For final approval and signing, the two 24" x 36" copies must be on a stable, reproducible film and contain the seal and signature of the registered engineer or surveyor responsible for preparation of the plan. The final plan shall also be made available electronically, in the Board's choice of AutoCAD, PDF, or GIS format.

If the review is intended to be preliminary, copies may be paper-based and shall bear the title "PRELIMINARY" prominently displayed.

The subdivision or site plan shall include the following information:

- a. Name of the development, the name of the town(s) in which it is located, the property tax map and lot numbers, name and address of the applicant, and the name and registration number of the preparer.
- b. A location map, drawn at no smaller scale than 500 feet to the inch, showing the relationship of the proposed site or subdivision to all land within 1,000 feet of all boundaries of the site and public access to the site.
- c. If a new parcel or parcels are to be created, parcel boundaries to be shown based on a perimeter survey of the parcel, along with internal lot lines, made d by a professional land surveyor licensed in Maine and completed to the standards of the Board of Licensure, relating to reference points, and showing magnetic and true north, graphic scale, corners of the parcel, date of survey and total acreage.
- d. If a subdivision, a listing or depiction of the lots or units to be created, together with dimensions and areas, and proposed street names in conformance with the Town of Monmouth Addressing Ordinance.
- e. Location and description of all existing and proposed permanent markers, as well as location of temporary markers placed to enable the Planning board to locate the parcel or lots and appraise the layout of the proposed project in the field.
- f. The location and dimensions of all existing and proposed buildings, structures and additions.



- g. A depiction within each lot of a building envelope, illustrating required setback and buffer areas, and proposed clearing limits.
  - h. The location and design of any existing or proposed sewage disposal, water supply, storm drainage and trash disposal facilities and other utilities such as gas and electricity, both above ground and buried.
  - i. Unless the development consists of building conversion or construction within an existing building footprint, show significant existing natural features including surface water, swales and other drainage ways, floodplain boundaries, wetlands, steep slopes (over 20 percent), rock outcrops, forested and open areas, and any essential or unique physical features, including but not limited to those shown on maps in the current Comprehensive Plan.
  - j. Any fish, aquatic life, bird, or other wildlife habitat, including vernal pools, located on or adjacent to the property and identified by the Maine Department of Inland Fisheries and Wildlife, or on maps in the current Comprehensive Plan.
  - k. Any archaeological, historical, or visual resources, including but not limited to those described in the current Comprehensive Plan.
  - l. The location, names, and dimensions of existing streets, sidewalks, rights-of-way, easements, utility lines, and other built features on and abutting the project.
  - m. Unless the development consists of building conversion or construction within an existing building footprint, show existing contours and proposed finished grade elevations of the entire site shown at a contour interval of two feet (2'), unless otherwise specified by the Board.
  - n. The location of any shoreland zoning district boundaries affecting the property.
  - o. If a non-residential development, show all proposed property improvements, including driveways and parking, lighting, signs, fences and buffers, outdoor machinery, waste disposal facilities, and similar fixtures.
  - p. Five (5) lines for signatures of the Town of Monmouth Planning Board members and one (1) line for the date of approval.
  - q. Identify farm land p2009 chapter 356
- 6.4.1.5 Attached and appended narrative documentation, in electronic or printed form, including the following:
- a. A copy of the most recent registered deed of ownership of the property, and if the applicant is not the owner of the property, additional evidence of the applicant's right, title or interest in the property.
  - b. A listing of the names, addresses and map and lot numbers of owners of all properties

within five hundred (500) feet of the subject property as shown in the property tax records of the Town as of the date of the application.

- c. If new parcel(s) are to be created, a copy of the original perimeter survey.
- d. A soils report, containing:
  - 1 An on-site soils investigation prepared by a Maine Certified Soil Scientist, Maine Registered Professional Engineer, or Maine State Certified Geologist, indicating types of soil and location of test sites with measured distances from an identifiable boundary, and proposed location and design of subsurface sewerage disposal systems if these are to be used.
  - 2 A copy of that portion of the Kennebec County Soil Survey covering the proposed project.
  - 3 When the soil survey shows soils which have low or very low potential for residential development under the rating system of the SCS publication *Soil Survey Data for Growth Management in Kennebec County, Maine, December 1989*, and wastewater will not be disposed of through the Monmouth Sanitary Treatment System, the applicant shall prepare a high intensity soil survey and report. Soils shall be identified in accordance with the National Cooperative Soil Survey. The report shall include a map identifying soil types down to 1/8 acre or less at a scale equivalent to the plan submitted, and shall show the location of all test pits, accompanied by a log of each sample point identifying textural classification and depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for subsurface waste disposal shall not constitute a high intensity soil survey.
- e. Indication of the type of sewage to be used:
  - 1. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Monmouth Sanitary District shall be provided stating that the district has the capacity to collect and treat the wastewater and that proposed improvements have been suitably designed; or
  - 2. When sewage disposal is to be by subsurface wastewater disposal systems, test pit analyses, prepared by a Licensed Site Evaluator, shall be provided. A map showing the location of all test pits dug on the site shall be submitted, with measured distances from an identifiable boundary and from existing wells and waste disposal systems on adjacent properties within 300 feet.
  - 3. If a non-residential development, a description of the type and quantity of waste to be produced, identification of potentially toxic wastes, and a description of proposed pre-treatment systems, if warranted.
- f. Indication of the type of water supply to be used:
  - 1. When water is to be supplied by public water system, a written statement from the Monmouth Water Association shall be provided, indicating there is adequate supply and pressure for the development and that proposed improvements have been suitably designed. Where the MWA's supply main is to be extended, a written statement from the Fire Chief, approving the location of fire protection facilities, if any; or
  - 2. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydro-geologist familiar

with the area.

- g. Unless the development consists of building conversion or construction within an existing building footprint, a soil erosion and sedimentation control plan that includes temporary and permanent soil retention measures and a schedule showing when erosion controls will be installed in relation to construction activities. The erosion control plan shall include a site plan locating erosion controls for the contractor and/or builder.
- h. A storm water management plan that uses methods of calculating runoff appropriate to the size and nature of the proposed project and the area in which it is located, and which addresses specific numerical standards applicable to the watershed in which it is located. When located within the jurisdiction of the Cobbossee Watershed District, comments from the Cobbossee Watershed District or any other qualified agency or engineer designated by the town shall be provided prior to final approval.

Copies of any proposed restrictive covenants, easements, leaseholder or homeowner association agreements and corporate papers, contracts, deeds to commonly held lands, deeds and covenants to the Town of Monmouth, or to the State of Maine or to any other public body or to any private organization or corporation; and any other documents, existing or proposed, which may affect the land or determine or affect the uses of land in the development.

#### 6.4.2 Additional Required Submissions

Further submissions are required for the following forms of development:

- I. A non-residential development that exceeds ten thousand (10,000) square feet of gross floor area;
- II. Any development which proposes the construction of a street, regardless of whether it is to be dedicated to the Town, or extension of public water or sewer lines;
- III. Any subdivision containing ten (10) or more lots;
- IV. Any subdivision containing five (5) or more lots which is not proposed to be connected to the Monmouth Sanitary Sewer System.

##### 6.4.2.1 On the plan or additional sheets:

- i. Proposed design and location of all streets, with construction details including a typical cross section, plan, and profile with lengths of all straight lines, the deflection of angles, radii, length of curves, and central angles of all curves, and tangent distances and bearings.
- j. The location, dimensions and layout for all proposed curbs, sidewalks, driveway entrances, parking areas, fences, retaining walls, outdoor lighting and similar features.
- k. The location and construction details of all proposed public water lines, sewer lines, common utility lines, including electrical, telephone, and cable.

1. The location, dimensions, and purposes of any existing or proposed rights-of-way, easements and dedicated or common areas, whether private or public, together with a description of how these and any other legal restrictions may affect the use of the parcel.

6.4.2.2 Attached and appended narrative material:

- a. An initial assessment of the proposed development's impact upon Town services and facilities, including written review comments from relevant town officials. If the initial assessment indicates a potentially adverse impact upon a service or facility, the Board may request additional studies or reports including but not limited to the following:
  - i. Estimated impact on the sewage disposal system, including flow estimates and assessment of capacity;
  - ii. Estimated impact on the public water system, including flow estimates, capacity and assessment of existing or potential water pressure;
  - iii. Estimated impact on the school system;
  - iv. Estimated impact on public safety providers;
  - v. Estimated impact on the public works department, including solid waste disposal;
  - vi. Estimated impact on existing storm water management systems, including flow and water quality; and
  - vii. Estimated impact on existing recreation facilities and provisions or methods to meet proposed needs.
- b. A road use evaluation that includes the expected volume and type of traffic resulting from the proposed subdivision and site distance analyses at each entrance/ exit to the development and at each internal intersection. Trip generation rates used shall be taken from *Trip Generation Manual, 1991 edition* or subsequent revisions, published by the Institute of Transportation Engineers.
- c. A cost estimate and proposed performance guarantee sufficient to secure completion of all improvements proposed to be constructed.
- d. Prior to final approval by the Board, the applicant shall present written evidence that the Board of Selectpersons is satisfied with the legal sufficiency of any documents conveying any public land dedication or easement.
- e. If a subdivision will contain twenty (20) or more lots which will not be connected to the Monmouth Sanitary Sewer System, a description of the phased implementation of the subdivision, in such a way that no more than ten (10) lots are sold or developed during any twelve month period.

6.4.3 Submission Items Related to Particular Circumstances:

- 6.4.3.1 A hydro geologic assessment, to be prepared and submitted by a Certified Geologist or Registered Professional Engineer experienced in hydrogeology under the following conditions:

- i. When the property will not be served by public sewer and the proposal involves a non-residential use which will generate more than a daily average of 500 gallons of waste water of any type, *or*
- ii. When any part of the subject property is located within the wellhead protection area of a public water supply *or*
- iii. When the subject property lies over or within 300 feet of a mapped sand and gravel aquifer.

6.4.3.2 A traffic impact analysis report shall be prepared and submitted by a professional engineer, when the road use evaluation (section 6.4.2.2b) indicates a traffic generation of greater than one hundred (100) trips during the peak hour of the day. The report must demonstrate that the street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development have adequate traffic carrying capacity or can be suitably improved to accommodate the amount and types of traffic generated by the proposed use. The analysis will demonstrate whether the development will reduce the streets Level of Service to ADT or below according to the *1985 Highway Capacity Manual, Special Report 209*, Transportation Research Board, or most current edition or subsequent revisions.

6.4.3.3 A natural resource mitigation plan, prepared by a qualified professional in the area(s) affected, shall be submitted, if preliminary analysis shows that the development will impact an identified deer wintering area, an identified critical natural area, or other critical natural resource identified by the Comprehensive Plan.

6.4.3.4 An historical resource mitigation plan, prepared by a qualified professional in the area(s) affected, will be submitted, if preliminary analysis indicates the potential for impact on archeological or historic resources.

6.4.3.5 If the development will require a permit from any state or federal agency, including but not limited to those listed below, a copy of the permit shall be submitted prior to final approval by the Board.

- a. Maine Department of Environmental Protection, under the Site Location of Development Act or Natural Resources Protection Act, or if a Wastewater Discharge License is needed.
- b. Maine Department of Health and Human Services, if the subdivider proposes to provide a public water supply system.
- c. Maine Department of Health and Human Services, if an engineered subsurface wastewater disposal system is proposed.
- d. US Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
- e. Maine Department of Transportation, if the development will require driveway or entrance permit(s) or a Traffic Movement Permit.

- 6.4.3.6 The Planning Board may request additional information or studies whenever conditions exist to suggest extraordinary impacts from the development. The Board may request items at any time; items not requested at the time of pre-application meeting may not be required for a determination of a completed application.

#### 6.4.4 Waiver of Submission Requirements

- 6.4.4.1 Where the Board or the Code Enforcement Officer concludes that there are unique circumstances of a particular development, it may waive portions of the submission requirements. The Board may accept a site plan that is not prepared by a registered engineer or surveyor if there is no structural change to existing buildings, there is no significant site work required or the proposed project does not trigger concerns of storm water management. Waiver of submission requirements does not relieve the applicant of the responsibility to demonstrate that the Review Criteria and Performance Standards of this Chapter will be met.
- 6.4.4.2 The applicant shall submit a list of submission requirements proposed to be waived at the pre-application meeting. The planning board or CEO may grant any or all requested waivers at the time of the pre-application, unless it finds that the granting of a waiver may prejudice its review of the application on its merits.
- 6.4.4.3 The Board or CEO is authorized to require such conditions in the granting of a waiver as will assure the purposes of this Ordinance are met.

### 6.5 Performance Guarantees

#### 6.5.1 Types of Guarantees

Performance guarantees are required to ensure the completion of infrastructure improvements including but not limited to roads, sidewalks, utilities, sewerage collection and treatment, water supply, fire protection facilities, and storm water control.

Prior to final plan approval, the applicant shall provide one of the following performance guarantees for an amount, determined by a professional engineer or estimator, adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

- i. Either a certified check payable to the Town of Monmouth or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
- ii. An irrevocable letter of credit from a financial institution establishing funding for the construction of improvements, from which the Town may draw if construction is inadequate, approved by the Board of Selectpersons, or Town Manager;
- iii. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed; or
- iv. Any combination of the three methods described above.



The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the Code Enforcement Officer, Public Works Director, Board of Selectpersons, and/or Town Attorney.

6.5.1.1 Escrow Account

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, the direct deposit into a line account, or the purchase of a certificate of deposit. For any account opened by the applicant, the Town shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required improvements.

6.5.1.2 Letter of Credit

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the improvements and may not be used for any other project or loan

6.5.1.3 Conditional Agreement

In the case of a subdivision, the Board, at its discretion, may allow the applicant to enter into a binding agreement with the Town in lieu of, or in combination with, the other financial performance guarantees. Such an agreement shall provide for approval of the plan on the condition that no more than four lots may be sold or built upon until either:

1. It is certified by the Board, or its agent, that all of the required improvements have been installed in accordance with this Ordinance and the regulations of the appropriate utilities; or
2. A performance guarantee, acceptable to the Town, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.

Notice of the agreement and any conditions shall be on the final plan which is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in section 6.5.3 below.

6.5.2 Contents of Guarantee

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the Town shall have access to the funds to finish construction.

6.5.3 Release of Guarantee

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part based upon the inspection report of the Code Enforcement Officer and

whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release was requested.

#### 6.5.4 Default

If, upon inspection, the Code Enforcement Officer finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he/she shall so report in writing to the Board of Selectpersons, the Planning Board, and the developer or builder. The Board of Selectpersons shall take any steps necessary to preserve the Town=s rights.

### 6.6 Completion of Required Improvements

- 6.6.1 At least five (5) days prior to commencing construction of required improvements, the developer or builder shall:
- a) Notify the Code Enforcement Officer in writing of the time when he/she proposes to commence construction of such improvements, so that the Board of Selectpersons can cause inspection to be made to assure that all specifications, requirements, and conditions of approval shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Planning Board, and
  - b) Deposit with the Board of Selectpersons a check for the amount of 2% of the estimated costs of the required improvements to pay for the costs of inspection. If, upon satisfactory completion of construction and cleanup, there are funds remaining, the surplus shall be refunded to the developer or builder as appropriate. If the inspection account shall be drawn down by 90%, the developer or builder shall deposit an additional 1% of the estimated costs of the required improvements.
- 6.6.2 The Board of Selectpersons shall appoint an inspecting official, who shall be qualified to evaluate construction materials and practices to be utilized. The inspecting official shall have no financial interest in the project to be inspected.
- 6.6.3 If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plan and specifications filed by the developer, he/ she shall so report in writing to the Board of Selectpersons, Planning Board and the developer and builder. The Board of Selectpersons shall take any steps necessary to preserve the Towns rights.
- 6.6.4 If at any time during the construction of the required improvements, it becomes necessary to modify the installation due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc., the Code Enforcement Officer is authorized to approve minor modifications. The Code Enforcement Officer shall approve any action under this section in writing and shall attach a copy of the approval to the approved site plan. Revised plans shall be filed with the Board as appropriate. For major changes, such as relocation of rights-of-way and property boundaries or changes of grade by more than



1%, etc., the developer shall obtain permission to revise the plans in accordance with section 6.2.3.

- 6.6.5 At the close of each summer construction season the Town shall, at the expense of the developer, have the site inspected by a qualified individual. By December 1 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.
- 6.6.6 Prior to the sale of any land, the developer shall provide the Board with a letter from a Registered Land Surveyor, stating that all monuments shown on the plan have been installed.
- 6.6.7 Approval of a project by the Planning Board shall not constitute acceptance by the Town of any street, easement, open space or recreation area or other public improvement shown on a plan. Approved plans shall contain a statement that such areas shall remain private and be maintained by the developer or by a management entity and shall not be maintained by the Town of Monmouth until such time as accepted by the Town.
- Prior to a vote by the Board of Selectpersons to submit a road or other public improvement to a town meeting, a written certification signed by a professional engineer shall be submitted to the Board of Selectpersons at the expense of the applicant, certifying that the proposed public improvement meets or exceeds the design and construction requirements of this Ordinance. If there are any underground utilities, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility. AAs built@ plans shall be submitted to the Board of Selectpersons.
- 6.6.8 The developer shall be required to maintain all improvements and provide for snow removal on streets, parking areas, and sidewalks within the development until control is placed with an approved management entity or the Town.

## **6.7 General Development Standards**

The development standards in this section are intended to ensure that new development meets the review criteria expressed in section 6.3 of this Ordinance. Compliance with development standards is *prima facie* evidence of meeting the criteria. However, applicants for development review may propose alternative approaches that will satisfy the criteria equally as well or better than the ordinance standards. In all instances, the burden of proof shall be on the applicant to demonstrate that criteria have been met.

### **6.7.1 Lot Design**

- 6.7.1.1 All lots proposed for development shall meet the dimensional standards of section 3.1 of this ordinance, unless they are legally non-conforming lots created prior to the effective date of this ordinance. A building envelope shall be shown on the development plan to depict building setback, clearing limits and other areas of development limitation.

- 6.7.1.2 All lots created within a subdivision shall contain the minimum required street frontage along existing public roads or along a road meeting the standards of the Monmouth Streets and Ways Ordinance, unless otherwise specified in this ordinance.
- 6.7.1.2.1 A lot existing as of the effective date of this ordinance that has no street frontage may be divided into no more three (3) lots, provided that each lot shall have the minimum required frontage on a right-of-way at least thirty (30) feet in width, with a travel way a minimum of eighteen (18) feet in width, surfaced with at least twelve (12) inches of base gravel. Lots so created shall meet all other dimensional requirements of this ordinance.
- 6.7.1.3 No lot in any development shall have a ratio of lot depth to shore frontage of greater than 5:1. No lot in any development shall have a ratio of lot depth to street frontage of greater than 5:1, *unless* the plan shows a strip of land within the lot a minimum of fifty (50) feet wide labeled with the phrase “reserved for future right-of-way, not to be built upon.” The street frontage shall exceed two hundred fifty (250) feet and the building envelope shall be shown with a road setback on the side facing the future right-of-way.
- 6.7.1.4 On a cul-de-sac or street with a radius at the right-of-way line of less than two hundred fifty (250) feet, the frontage may be measured at a distance equal to the required front setback for the lot.

6.7.2 Erosion and Sedimentation Control

- 6.7.2.1 Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of *Maine Erosion and Sediment Control BMPs*, published by DEP (March, 2003 or as revised).
- 6.7.2.2 The plan for erosion control submitted with a development application shall illustrate the timing and installation of measures for control of runoff during construction, as well as permanent vegetative and structural measures.
- 6.7.2.3 Erosion and sedimentation control measures shall apply to all aspect of the proposed development involving land disturbance, and shall be in place during all stages of the activity. The amount of exposed soil at every phased of the construction shall be minimized to reduce erosion potential.

6.7.3 Stormwater Control and Phosphorous Management Adequate provision must be made for the collection and dispersal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a Stormwater Management Plan.

- 6.7.3.1 Stormwater runoff systems must be designed to detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate. The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
- 6.7.3.2 To the extent possible, the plan must retain stormwater on the site using the natural features of the site and must not have adverse impacts on abutting or downstream properties.
- 6.7.3.3 The level of phosphorous in runoff expected to be generated shall be estimated and controlled as described in the manual Stormwater Management for Maine, Vol. II – Phosphorus Control in Lake Watersheds (Maine DEP, 2008), with the exception of chapter 6, or as revised. The quantity of phosphorous leaving any site shall not exceed the permitted allocation for the Watershed District in which the property is located. When located within its jurisdiction, comments from the Cobbossee Watershed District or any other qualified agency or engineer designated by the town shall be provided prior to final approval.
- 6.7.3.4 The Planning Board may require additional off-site mitigation of phosphorous.
- 6.7.3.5 Any project which requires a Stormwater Management Permit from the Maine Department of Environmental Protection must submit a copy of the approved permit prior to final approval.
- 6.7.3.6 For projects which do not require a DEP Stormwater Management Permit, the use of Low Impact Development techniques, consistent with the publication *Stormwater Management for Maine*, (MAINE DEP 2008 or as revised) is highly encouraged.
- 6.7.3.7 For projects involving structural treatments, a Stormwater Maintenance Agreement must be submitted at the time of application. The SMA must indicate how stormwater facilities will be maintained through the course of their projected life.

#### 6.7.4 Preservation of Critical Natural and Cultural Resources

##### 6.7.4.1 Habitat Preservation:

- 6.7.4.1.1 Any development shall be planned, sited, and constructed so as to avoid impact on critical wildlife habitat or Critical Natural Areas as identified in the Monmouth Comprehensive Plan, including the habitat of endangered or threatened species.
- 6.7.4.1.2 Any application for development within a Deer Wintering Area, as identified in the Monmouth Comprehensive Plan, shall be offered for review by the Maine Department of Inland Fisheries and Wildlife prior to approval by the Town. Any comments on the application from IFW shall be submitted to the Planning Board.

- 6.7.4.1.3 If any portion of the site has been identified and field-verified as a significant vernal pool, that area shall be located outside of any proposed building envelope or area to be cleared or filled.

6.7.4.2 Visual Resources:

- 6.7.4.2.1 A development shall be planned, sited, and constructed in a manner that minimizes negative impacts upon scenic views and prominent landmarks identified in the Monmouth Comprehensive Plan. Measures to minimize visual impacts may include enhanced setbacks, height limitations, or limitations on construction materials.
- 6.7.4.2.2 When a proposed development encompasses a hilltop or ridgetop area, the plan shall specify a limitation on tree removal and building placement within twenty (20) feet vertical distance of the ridgeline.

6.7.4.3 Archeological and Historic Features

- 6.7.4.3.1 Within any area identified by the Monmouth Comprehensive Plan or competent historic survey as having a potential for archeological resources, an assessment shall be performed to determine the existence and significance of those resources. The assessment shall be performed by a qualified professional and shall be submitted for review and comment to the Maine Historic Preservation Commission. If significant resources are identified in the course of this assessment, the development will be designed and constructed to minimize impacts on these resources.
- 6.7.4.3.2 Any development proposed on or within five hundred (500) feet of sites listed on the National Register of Historic Places shall be submitted for review and comment to the Maine Historic Preservation Commission prior to consideration by the Board. Development, including renovations, within these areas may be subject to limitations to preserve historical integrity, including but not limited to construction materials and architectural treatments.

6.7.5 Air Quality

- 6.7.5.1 No emission of dust, dirt, fly ash, smoke or other particulate matter, gasses or chemicals shall be allowed which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity, which can cause soiling beyond the property boundaries, or which fail to meet or cannot meet the standards set by the Maine Department of Environmental Protection.
- 6.7.5.2 No development shall emit offensive or harmful odorous air contaminants perceptible beyond the property boundaries, either at ground or habitable elevation

6.7.6 Water Quality

- 6.7.6.1 No development shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature,

quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwater so as to contaminate, pollute, or harm such waters or cause nuisances, in the form of debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

- 6.7.6.2 No discharge of contaminants into the environment shall increase any contaminant concentration in groundwater to exceed the Primary Drinking Water Standards established by the State of Maine.
- 6.7.6.3 No extraction of groundwater, whether for commercial purposes or through density of development, shall result in a noticeable decrease in the level of the water table upon neighboring properties.
- 6.7.6.4 Where required under section 6.4.3.1 of this Ordinance, an assessment of groundwater hydrology shall contain data on existing groundwater quantity, quality, and directional flows, the location and size of any wells, disposal fields, extraction or injection facilities proposed, and an analysis of the effects of the proposed facilities both within the development and at the limits of groundwater impacts.
- 6.7.6.5 In a situation where installation of individual wells is proposed over active or recently active farmland, the Planning Board may require an analysis of existing and proposed levels of nitrate loading in the groundwater. The analysis must show that the concentration of nitrates in groundwater under drought conditions will not exceed the Primary Drinking Water Standards of the State of Maine at any point of extraction existing or proposed.
- 6.7.6.6 Any development which proposes to use or store petroleum products, toxic or hazardous chemicals, or liquid waste or byproducts shall provide a spill prevention and management plan, prepared by a registered professional engineer, at the time of application. The plan shall show the location and dimensions of all storage and containment facilities and an analysis of response measures to be in place. The spill prevention and management plan shall also be submitted for review and comment to the Monmouth Director of Civil Emergency Preparedness..
- 6.7.6.7 All wells, disposal systems, and other structures shown on the hydrogeological assessment or site plan shall be installed as shown at the time of installation, unless evidence is provided to the Planning Board that the alternative will provide better water quality protection.

#### 6.7.7 Floodplain Development

In areas delineated as being within the 100 year floodplain as shown on the Flood Insurance Rate Maps for the Town of Monmouth, all development, including modifications to existing structures shall conform to the requirements of the Monmouth Flood Plain Management Ordinance.

#### 6.7.8 Public Safety

- 6.7.8.1 For proposed commercial buildings it is recommended a key box security system be installed. A key box may be required in some cases.

6.7.8.2 The applicant must submit evidence that proposed fire protection measures are adequate, in the form of a written statement from the Monmouth Fire Chief that the proposed development will not exceed the capacity of the town fire department to provide adequate protection. Any development that will utilize water from the Monmouth Water Association shall provide standard hydrants at intervals specified by the fire chief. The fire chief may recommend additional protective improvements, including but not limited to cisterns, fire ponds, dry hydrants, fire lanes, separation of flammable wastes, or sprinkler systems. Commercial development requires state fire marshal review and approval.

6.7.8.3 Any security systems proposed for the development must be designed consistent with the capacity and practices of the law enforcement agency with primary jurisdiction in Monmouth. The applicant shall provide a written statement from the chief of that agency approving any proposed security measures.

#### 6.7.9 Homeowners Associations

6.7.9.1 A Homeowners Association shall be created whenever there is common ownership of property, including but not limited to, streets, open space, or common areas. The plan for a Homeowners Association shall be provided prior to final approval and shall contain, at a minimum, the following elements:

- i. Covenants for mandatory membership in the association, setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.
- ii. Articles of incorporation of the association as a not-for-profit corporation;
- iii. Draft by-laws of the association specifying the responsibilities, authority, and operating procedures of the association and providing for proper capitalization of the association.
- iv. A process whereby the association will levy annual charges against all owners of lots or dwelling units to meet expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.
- v. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.

6.7.9.2 The developer shall maintain control of common property, and be responsible for its maintenance until development sufficient to support the association has taken place. The timing and process for the transfer of control of common property to the association shall be stated in the bylaws.

#### 6.7.10 Solid and Sanitary Waste Storage and Disposal

6.7.10.1 Unless the development consists of single-family homes on individual lots, the developer shall be responsible for provision and maintenance of a solid waste disposal system.

6.7.10.1.1 All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.



6.7.10.1.2 The applicant shall provide a schedule for regular collection and a written statement from the manager of the facility at which waste will be disposed, approving the quantity and type of waste expected to be received.

6.7.10.1.3 All trash containers shall be placed on an impervious surface and fully screened from view of neighboring properties by a masonry or wooden screen a minimum of six (6) feet in height, with a finished side facing away from the container area. Provision shall be made to minimize loose and blowing trash.

6.7.10.2 All development on parcels located within two hundred (200) feet horizontal distance of sewer lines managed by the Monmouth Sanitary District, as measured from the corner of the parcel nearest an existing line, shall be required to connect to the public sewer system. Development on parcels not within 200 feet of the existing sewer lines shall not be prohibited from connecting. In all case, the Monmouth Sanitary District shall provide a written statement that the District has the capacity to serve the proposed use, and approving the design of the proposed improvements.

6.7.10.3 Development requiring sanitary waste disposal which will not be connected to the public sewer system shall demonstrate adequate soil capacity for subsurface wastewater disposal facilities. For each individual system proposed, a test pit within the proposed location of the system on the lot shall be shown. For all systems which are designed to serve two (2) or more lots or buildings, ownership and maintenance of the system shall be the responsibility of a homeowners association or, in the case of commercial development, the management entity for the development.

#### 6.7.11 Handling and Storage of Toxic or Hazardous Materials

6.7.11.1 All materials must be stored in a manner and location, which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

6.7.11.2 No flammable or explosive liquids, solids or gases shall be stored in commercial quantities above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage.

6.7.11.3 Any facility for the use or storage of toxic or hazardous chemicals or other liquids shall be designed and constructed with sealed concrete floors with dikes or comparable containment facilities, adequate to contain the largest quantity of stored liquid on site below the level of any drains or other openings.

6.7.11.4 The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies. The applicant shall identify any wastes proposed to be generated of these types and provide evidence that they will be disposed of in accordance with said standards.

- 6.7.11.5 A Spill Prevention and Response Plan prepared by a qualified professional and reviewed by the Monmouth Director of Civil Emergency Preparedness shall be provided to the Board at the time of application.

#### 6.7.12 Street Improvements

- 6.7.12.1 Street access shall be provided to all new lots created within the development, except as provided in section 6.7.1.2.1 of this ordinance. All streets shall be designed and constructed in accordance with the Road Design and Construction Standards Ordinance for the Town of Monmouth, except as provided below.

6.7.12.1.1 The Board may approve the deferral of the requirement for paving until the street has been accepted by the Town. The performance guarantee required for street construction shall identify a portion to be reserved for paving, which portion is refundable to the developer if the Town chooses not to accept the street. If the Town has adopted a policy that new streets outside of specified areas will not be accepted by the Town, the Board may waive the requirement for paving altogether.

6.7.12.1.2 If a proposed street is intended to join with or extend an existing town way served by the public sewer, the Board may waive construction standards of the proposed street to a level consistent with the existing town way.

- 6.7.12.2 Sidewalks shall be provided along a street wherever a parcel to be developed abuts property with existing street-side sidewalks. Sidewalks shall be provided between common parking areas and buildings within commercial and multi-family developments. Sidewalks shall be constructed of Bituminous or Portland Cement Concrete to a minimum width of four (4) feet, and placed upon a suitable gravel base.

#### 6.7.13 Access to the Development

6.7.13.1 All developments shall be designed to minimize the number of access points onto public roads in order to preserve safety and carrying capacity of those roads. Except where a parcel is located within the service area of the public sewer system, no proposed development shall be permitted more than one (1) access point for every four hundred (400) feet of frontage on an existing state or town way.

6.7.13.2 The applicant shall obtain a Driveway Permit, Entrance Permit, or Traffic Movement Permit from the Maine Department of Transportation and submit a copy of the approved permit prior to final approval of the development, if the development will access a state highway or state aid road.

6.7.13.3 The applicant shall obtain a Street Opening Permit from the Town Manager, or his/her authorized agent, for any new access onto an existing town way. The Town Manager, or his/her agent, shall specify culvert size and supervise culvert installation, and shall locate points of safe access for the opening. The cost of such opening shall be borne by the owner of the property to which access is provided.



- 6.7.13.4 All proposed access onto town ways shall be placed in a location with adequate sight distance to oncoming traffic. The sight distance, in linear feet, shall measure no less than ten (10) feet for every mile per hour of posted speed limit, but no less than two hundred fifty (250) feet. The sight distance of proposed access points and separation distances from adjoining driveways and street intersections shall be shown on the plan submitted for approval.
- 6.7.13.5 Access points shall be clearly identified by the use of signs, curb cuts, and landscaping. New streets shall be identified by name on the plan and shall be marked by signage conforming to the Town of Monmouth Street Naming and Numbering Ordinance.
- 6.7.13.6 All driveway entrances and exits shall be kept free from visual obstruction higher than three (3) feet above street level in a triangular area formed on two (2) sides by measuring 25 feet along the street and driveway lines from the intersection of the edge of their traveled ways, with the third side of the triangle defined by a line connecting the two points located 25 feet from that intersection.
- 6.7.13.7 Where a development has frontage on two or more streets, access shall be provided to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
- 6.7.13.8 All streets yielding access to the proposed development shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use. No development shall reduce a street's Level of Service to "D" or below as determined by using the capacity analysis procedures set forth in the *1985 Highway Capacity Manual*, (or current edition) as published by the Transportation Research Board and as hereafter amended. Where deemed necessary by the Board, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle paths, driveways and traffic controls within existing public streets for the purpose of alleviating congestion or improving public safety.
- 6.7.13.9 Where topographic and other conditions allow, provision shall be made for connections to adjoining similar uses, or future extension into undeveloped adjoining parcels, when such access:
- i) Will facilitate fire protection services; or
  - ii) Will enable users to travel between similar uses, without need to travel upon a street.

#### 6.7.14 Internal Circulation and Parking

- 6.7.14.1 A use shall not be extended, and no structures shall be constructed, enlarged, or changed to another use, unless off-street parking spaces and loading areas are provided. However, the requirements of this section may be waived by the planning board for establishments intending to occupy existing structures in Monmouth Center on Main Street from the Town Office to 500 feet southerly of the intersection of Welch Avenue and Main Street, on Pleasant and Maple Streets from their intersections

with Main Street to the Gray Mill Road, and the entire length of Gray Mill Road; and in North Monmouth on North Main Street from the Old Lewiston Road westerly to the intersection with the Wilson Pond Road.

- 6.7.14.2 Placement of Parking: Required off-street parking for all uses shall be located on the same lot as the principal structure, except when the Planning Board authorizes the joint use of a parking facility by two or more principal uses where it is clearly demonstrated that the parking facilities would substantially meet the intent of the requirements by reason of variation in the probable time of maximum use of the facilities by the employees and patrons of the uses involved.

Parking areas with more than two (2) parking spaces shall be arranged so that it is unnecessary for vehicles to back into a public or private street. The placement of off-street parking areas at the side and/or rear of structures will be strongly encouraged.

- 6.7.14.3 Parking Supply Schedule: Sufficient parking spaces shall be provided consistent with the proposed use of the property. The table below shall be used as a guideline for the quantity to be provided:

<i>Activity</i>	<i>Minimum Spaces</i>
Administrative, financial, governmental, legal and other professional uses	1 per 300 sq. ft. of gross floor area (GFA)
Auditorium, theatre, places of public assembly	1 per 3 seats
Multi-family housing	1 ½ per dwelling unit
Beauty and barber shops	2 per operator chair
Child care facilities	1 per 5 children
Gym, fitness center	1 per 1,000 square feet of gross floor area
Contract construction	1 per employee, plus 1 per vehicle normally on-site
Hotel, motel, inn, bed & breakfast, and rooming houses	1 per rental unit, plus 1 per employee
Industrial uses, warehouses, and wholesalers	½ per 1,000 square feet of gross floor area
Medical care facilities	1 per 4 beds
Medical offices	5 per physician
Restaurants	1 per 3 seats of rated seating capacity
Retail businesses	1 per 250 square feet of gross floor area
Schools:	
Elementary and Middle	2 per 1,000 square feet of classroom space
All other	4 per 1,000 square feet of classroom space
Veterinarian clinic	5 per veterinary

*Notes:*

The above are minimum standards, and additional spaces may be required, if necessary, to provide adequate off-street parking.

Where the calculation of parking spaces results in a fractional part of a complete space, the number of spaces required shall be rounded to the next highest number.

#### 6.7.14.4 Design of Parking Spaces and Access Aisles

- 6.7.14.4.1 Parking stalls shall not be accessible directly from the street nor from the throat area leading to the street access point.
- 6.7.14.4.2 Parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.
- 6.7.14.4.3 Parking stalls and aisle layout shall conform to the following minimum dimensions:

<i>Parking Angle</i>	<i>Stall Width</i>	<i>Skew Width</i>	<i>Stall Depth</i>	<i>Aisle Width</i>
90°	9' – 0"	--	18' – 5"	24' – 0"
60°	8' – 6"	10' – 5"	18' – 0"	16' – 0"
45°	8' – 6"	12' – 9"	17' – 5"	12' – 0"
30°	8' – 6"	17' – 0"	17' – 0"	12' – 0"

- 6.7.14.4.4 A minimum of one (1) space per development, plus one (1) per every twenty-five spaces of parking required under section 6.7.14.3, above, shall be designed and dedicated for the use of people with disabilities. Spaces so designated shall be a minimum of twelve-and-one-half (12 ½) feet wide and marked with pavement marking or signage.
- 6.7.14.4.5 Parking spaces and traffic flow shall be clearly indicated with signs or surface markings. If the parking spaces are not angled at 90 degree to the access aisle, the aisle shall be marked for one-way traffic only.
- 6.7.14.4.6 Bumpers and/or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.
- 6.7.14.5 Loading Facilities: Commercial, industrial and other non-residential and non-agricultural uses shall provide, as necessary, off-street loading facilities sufficient to handle the delivery requirements of the use. Such facilities shall be sited so that trucks, trailers, and other containers shall not be located, parked, or maneuvered for loading, unloading, or storage so as to impede traffic on any public way.
- 6.7.14.5.1 No loading area shall be located between the principal structure and the front lot line or street if other practical options exist on the lot. Loading docks shall not face the street frontage.
- 6.7.14.5.2 Retail, wholesale, warehouse and industrial operations with a gross floor area of more than 5,000 square feet shall provide a minimum of one (1) bay, plus one (1) additional bay for every fifty thousand (50,000) square feet of gross floor area, up to a maximum of five (5) bays.

#### 6.7.14.6 Lot Design and Circulation:

- 6.7.14.6.1 The design of parking lots may be required to reflect the incorporation of trees to reduce solar heating in the summer and to act as wind breaks. At minimum, lots shall be provided with at least one (1) two and one-half inch (2½") caliper shade tree per twenty parking spaces, located throughout the lot.
- 6.7.14.6.2 Lots shall be designed so that interior circulation and parking does not interfere with vehicles entering or exiting the public street. Adequate throat depth will be provided based on the expected number and type of vehicle trips.
- 6.7.14.6.3 Enclosures, such as guardrails, curbs, fences, walls and landscaping, shall be used to identify circulation patterns of parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of oncoming pedestrians and vehicles.
- 6.7.14.6.4 If sidewalks exist or are planned along the street, safe pedestrian access from the sidewalk to building entrances must be provided. Pedestrian crossings of paved parking or circulation areas must be marked with crosswalk signs and pavement markings.

#### 6.7.14.7 Paving of Parking Lots:

- 6.7.14.7.1 Where required or provided, all areas intended for vehicle circulation or parking shall be surfaced with a minimum of six (6) inches of gravel meeting MDOT spec. 703.06C for a base course beneath six (6) inches of crushed gravel meeting MDOT spec. 703.06A for a surface.
- 6.7.14.7.2 Parking lots consisting of more than three thousand (3,000) square feet must be paved with a bituminous-type paving material. The use of porous paving materials (porous asphalt or pervious concrete) to aid in the management of stormwater and reduce ice and water buildup on parking lots is highly recommended. Porous paving materials must be installed by a licensed contractor certified in the installation of the system to be used.

#### 6.7.15 Landscape Integration

All development shall preserve the existing natural landscape insofar as practicable and, where required, shall install vegetative or barrier landscaping for the purpose of reducing stormwater and visual impacts within the site and upon neighboring properties.

- 6.7.15.1 All subdivision plans shall show designated building envelopes within the development. Building envelopes shall be set so as to preserve existing wooded areas, areas with slopes exceeding twenty (20) percent, wetland areas, and any natural areas identified in the Monmouth Comprehensive Plan.
  - 6.7.15.1.1 Unless located within the service area of the public sewer system, the clearing limits for a development proposed within existing wooded areas shall maintain a wooded buffer strip no less than fifty (50) feet in width along all existing public

roads and along the outside perimeter of the property to be developed. The buffer may be broken only for driveways and streets.

6.7.15.1.2 Within rural areas, clearing limits should be located so as to reduce the visual impact of new buildings from the street or from identified areas of high scenic value.

6.7.15.2 Where not located within an existing wooded area, all commercial and multi-family residential development shall be effectively screened from the view of adjoining residential properties. Measures to achieve an effective screen may include coniferous vegetation in a strip at least ten (10) feet in width, a solid wood fence, or a combination of these measures. Fencing shall be erected with a finished side facing the adjoining property, and must be a minimum of six (6) feet in height and located a minimum of five (5) feet from the property line.

6.7.15.3 All vegetation to be planted on the site shall be part of a landscaping plan. The landscaping plan shall demonstrate a variety of species and heights sufficient to achieve the purposes intended. All species shall be selected for suitability for the site, including, where appropriate, roadside conditions.

#### 6.7.16 Business Signs

All business signs shall be described at the time of development approval. Signs shall be erected in conformance with the standards of this section and approval of the planning board, provided that signs erected on property which do not conform to the original approval may be considered and approved as a minor modification to the plans.

The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures shall not detract from proposed buildings and the surrounding properties, through conformance with the following standards:

6.7.16.1 No sign shall be located in, or extend over, the street right-of-way, nor shall any sign reduce or obstruct traffic visibility or present a safety hazard.

6.7.16.2 Not more than two (2) signs, building-mounted or free-standing, shall be permitted per premise or per business enterprise.

6.7.16.3 Except for directional signs permitted under the Maine Travelers Information Services Act, no free-standing sign shall be located within ten (10) feet of any street right-of-way line nor within twenty (20) feet of adjacent property lines.

6.7.16.4 External illumination of signs may be provided only by steady, stationary, shielded light sources directed solely on the sign so as not to cause glare for motorists, pedestrians or neighboring premises.

6.7.16.5 Electronic Message Signs are subject to the following standards:

6.7.16.5.1 The installation of an electronic message sign on existing property may be approved by the Code Enforcement Officer as a minor modification to the existing site.

6.7.16.5.2 Electronic message signs are permitted to be located only within the Maine DOT-designated Urban Compact Area, or on US Route 202 between the Blue Road and the Winthrop town line, or on State Route 126 within 1,500 feet of the intersection with South Monmouth Road. Only one (1) electronic message sign is permitted per premises.

6.7.16.5.3 Electronic message signs shall consist of a single frame of text or graphics which may be changed with a minimum hold time of five (5) seconds between frame changes. Signs which display only time and temperature may change with a minimum hold time of two (2) seconds. Frames shall contain static images with no flashing, intermittent, or moving light or lights. A frame effect such as a scroll or travel may be used between frames, provided lighting does not vary in intensity.

6.7.16.5.4 Except for time and temperature displays, all electronic message signs shall be turned off within one (1) hour of the daily closing of a business to within one (1) hour of the following day's opening.

6.7.16.7 All signs shall be permanently affixed to the ground or building. Portable Signs, including but not limited to trailer-mounted signs, shall be prohibited, except under the following circumstances:

- i. advertising for a new businesses not to exceed thirty (30) days.
- ii. signs designed to be carried into the business building at the close of the business day.

#### 6.7.17 Outdoor Lighting

All lighting and reflective properties of the proposed development shall be designed to minimize adverse impact on adjacent properties and public ways. No development shall produce a strong, dazzling light or reflection of light onto neighboring properties or public ways so as to create a nuisance condition for an adjacent property owner or impair the vision of the driver of any vehicle upon that way.

Lighting fixtures shall be shielded or hooded, and placed so that the lighting elements are not exposed to normal view by motorists or pedestrians or from adjacent dwellings.

If abutting property contains an existing or proposed residential use, illumination at the property line shall not exceed 0.5 foot-candles.

#### 6.7.18 Noise

6.7.18.1 No development shall be permitted to produce noise which, by character of its loudness or frequency, constitutes an irritant to neighboring uses or the general public. Any development reasonably anticipated to produce such noises must demonstrate that the source of such noise is located, oriented, muffled or otherwise limited to the maximum permitted sound levels.



- 6.7.18.2 The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity shall be limited according to the abutting use and time period, as listed below. Sound level shall be estimated at a level 4 feet above ground at the property boundary of the source.

*Sound Pressure Level Limits Using the  
Sound Equivalent Level of One Minute (leq 1)*

<u>Abutting Use</u>	<u>7am-10pm</u>	<u>10pm-7am</u>
Residential	60	45
Commercial	65	55
Industrial	70	60

Noise shall be estimated according to the A-weighted response scale, fast response on a meter conforming to the American National Standards Institute “American Standard Specification for General Purpose Sound Level Meters.” Noise estimates shall be based only on sound to be generated by the development, excluding background, or ambient noise.

- 6.7.18.3 The following activities within a development shall not be subject to sound level limitations:
- i. Noises created by construction and temporary maintenance activities between 6:30am and 8:00pm.
  - ii. The noises of safety signals, warning devices, emergency pressure relief valves and any other emergency activity.

**6.8 Development Standards for Specified Activities**

This section contains development standards tailored to specific forms of development based on their unique characteristics or features. The standards in this section do not apply outside of the specified use.

**6.8.1 Open Space and Clustered Residential Subdivision**

This section governs subdivisions which are proposed to differ from conventional subdivisions by the provision of undeveloped space for recreation or environmental protection in exchange for increased lot density within the developed area.

- 6.8.1.1 Development and Lot Design: To be eligible for treatment under the standards of this section, a minimum of 40 percent (40 %) of the area of the parcel to be subdivided must be reserved as open space meeting the criteria of section 5.8.1.3. Land area so reserved shall be clearly denoted on the subdivision plan with the notation “Reserved Open Space Not to be Developed.”

Building lots shall be oriented on the parcel to be developed so as to achieve multiple objectives: to minimize environmental impacts, to minimize costs of providing public water, sewer and road access, to provide individual lot access to the common open space, and to minimize visual impacts of development.

All building lots shall be shown on a subdivision plan with a building envelope.

6.8.1.2 Dimensional Requirements: Minimum required lot area and frontage shall be reduced according to whether the individual lots are served by the Monmouth Sanitary District, unless designed as a condominium form of ownership.

6.8.1.2.1 Development Served by the Public Sewer: Individual lots may be reduced to a minimum area of 10,000 square feet. Lots fronting on an existing public street may reduce street frontage to 75 feet.

Further, if at the time of application, the applicant demonstrates legally binding restrictions limiting occupancy to affordable incomes (as defined) or seniors, individual lots may be reduced to a minimum area of 5,000 square feet. Minimum frontage required on all streets may be reduced to 60 feet. If the applicant chooses to restrict only a portion of the proposed lots, the minimum lot size reduction shall only apply to those lots restricted.

6.8.1.2.2 Development NOT Served by the Public Sewer: Individual lots may be reduced to a minimum area of 24,000 square feet. Lots fronting on an existing public street must have a minimum street frontage of 150 feet. Lots fronting on an existing or proposed private road must have a minimum street frontage of 100 feet.

Further, if at the time of application, the applicant demonstrates legally binding restrictions limiting occupancy to affordable incomes (as defined) or seniors, individual lots may be reduced to no less than 20,000 square feet. Minimum frontage required on all streets may be reduced to 100 feet. If the applicant chooses to restrict only a portion of the proposed lots, the minimum lot size reduction shall only apply to those lots restricted.

6.8.1.3 Unit Density: If the development is proposed to be a condominium form of ownership on which all units are situated on a single lot owned in common, the permitted density shall be calculated based on the number of lots that would have been permitted on the net buildable area of the original parcel. The “net buildable area” is defined as the acreage of the parcel remaining after deduction of wetlands, floodplain, and ground slope exceeding twenty (20) percent.

If the development will be served by the public sewer, the permissible unit density will be one per 10,000 square feet of net buildable area. If at the time of application, the applicant demonstrates legally binding restrictions limiting occupancy to affordable incomes (as defined) or seniors, the permissible unit density will be one per 5,000 square feet of net buildable area.

If the development will NOT be served by the public sewer, the permissible unit density will be one per 24,000 square feet of net buildable area. If at the time of application, the applicant demonstrates legally binding restrictions limiting occupancy to affordable incomes (as defined) or seniors, the permissible unit density will be one per 20,000 square feet of net buildable area.



6.8.1.4 Character of Open Space: Open space proposed to be reserved must be of a character and design intended to provide significant recreational and/or environmental benefits. The following standards must be met.

6.8.1.4.1 Reserved open space shall contain areas of wetland and critical wildlife habitat, if located on the parcel, but shall not be limited to those areas. Generally, a minimum of 1/3 (one-third) of reserved land shall be suitable for recreational uses.

6.8.1.4.2 Reserved open space shall be accessible to all owners of property within the subdivision without necessitating crossing of non-reserved private land.

6.8.1.4.3 If located within 2,000 linear feet of the intersection of Routes 135 and 132 in Monmouth Center or the intersection of New Street and Main Street in North Monmouth, or within any area designated for public acquisition in a Monmouth Open Space or Comprehensive Plan, a portion of the reserved open space useable for public recreation shall be offered to the Town of Monmouth in accordance with the provisions of 6.8.1.4.5 (1) or (2), below.

6.8.1.4.4 Reserved open space shall be legally restricted from future development of any kind, except for structures in support of passive recreation. The reserved land may be used for managed agriculture or forestry.

6.8.1.4.5 Ownership of the reserved open space shall be limited to one of the following options:

- (1) Dedication to the Town or a suitable land trust, if either is willing to accept the dedication.
- (2) Dedication of a conservation easement or development rights to the Town or a suitable land trust with ownership and maintenance responsibilities remaining with the original owner or homeowners association.
- (3) Common ownership of the open space by a homeowners' association which assumes full responsibility for its maintenance.
- (4) Deed-restricted private ownership which shall prevent development and/or subsequent subdivision of the open space and provide maintenance responsibility. This option may apply only if open space is part of an existing farm, working or not, and there is a plan to farm by the owner.

## 6.8.2 **Manufactured Housing Parks**

This section governs subdivisions which are proposed to differ from conventional subdivisions in that all land and lots within the subdivision are used solely for the placement of manufactured housing units.

6.8.2.1 **Parks Limited to Land Accessible to Public Sewer**: New manufactured housing parks not located on public sewer are not permitted. This shall not be construed to prohibit the establishment of manufactured housing subdivisions on lots conforming to the dimensional standards of section 4.1.1.1.

- 6.8.2.2 A manufactured housing park legally existing prior to the date of this ordinance may continue and may be expanded in compliance with other sections of this ordinance.
- 6.8.2.3 Submission Requirements: In addition to the requirements of Section 6.4 of this ordinance, an applicant for a manufactured housing park shall submit:
- i. A description of the proposed form of ownership of units within the park, and
  - ii. A copy of the proposed park rules to be implemented.
- 6.8.2.4 Dimensional Requirements: Lots within a manufactured housing park shall comply with the dimensional standards of sections 4.1.1.3, 4.1.2.4, 4.1.3.2.2, and 4.1.3.4.2, except as follows:
- 6.8.2.4.1 The planning board is authorized to allow a reduction in the minimum lot size to no less than five thousand (5,000) square feet where the development plan shows the precise location on each lot where the pads will be placed, provided those locations meet setback, parking, and other requirements.
- 6.8.2.4.2 The planning board is authorized to allow a reduction in the minimum lot size to no less than five thousand (5,000) square feet where either all of the units within the park will be owned by the park management, *or* where park rules limit occupancy of units to persons aged 60 or over.
- 6.8.2.5 Buffering and Screening: Unless the average lot size within a manufactured housing park exceeds 10,000 square feet, the development shall comply with the provisions of section 6.7.15.3 of this ordinance regarding buffering. Land area utilized for a vegetative buffer shall not be part of the individual lots to be rented or leased.
- 6.8.2.6 Parking Requirement: The development plan shall provide a minimum of two (2) parking spaces per lot or unit.
- 6.8.2.6.1 At least one (1) space must be provided upon each lot.
- 6.8.2.6.2 Any parking area intended for common use, including tenant or visitor parking, must comply with the design standards of section 6.7.14 of this ordinance.
- 6.8.2.6.3 Unless internal park roads are paved to a minimum width of twenty-four (24) feet, no parking spaces shall be located along the road, and the road shall be posted to prohibit parking.
- 6.8.2.7 Recreation or Open Space Areas: Open space shall be provided within a Manufactured Housing park in the amount of no less than five (5) percent of the aggregated lot area. Land allocated to open space may include required buffer areas. A significant portion of the open space shall be useable for active or passive recreation. The planning board may require the developer to make improvements within the open space to support active or passive recreation, based on the anticipated nature of the park tenants.

6.8.2.8 Park Streets and Sidewalks: All streets within the Manufactured Housing park shall conform to the requirements of the Monmouth Streets and Ways Ordinance for local roads, except that shoulders are not required and no right-of-way will be designated. If sidewalks are to be installed, they shall conform to section 6.7.12.2 of this ordinance.

6.8.2.9 Manufactured housing Sales: A manufactured housing park shall not be used to market Manufactured Housings which are not intended for use within the park. Any Manufactured Housing offered for sale must be installed on a pad on a designated lot within the park.

6.8.2.10 Limitation on Size of Manufactured Housing Unit: Manufactured housing units to be placed within a manufactured housing park shall be limited to ten (10) feet in height, and to a gross floor area of two thousand (2,000) square feet.

6.8.2.11 Movement of manufactured housing

6.8.2.11.1 Purpose

The purpose of this section is to regulate the moving of manufactured homes, house trailers and mobile homes within and beyond the municipal boundaries of the town and to ensure the safety and general welfare of the public. The park owner shall not allow any person to move or cause to be moved within or beyond the municipal boundaries of the town any manufactured homes, house trailers and mobile home that has been established within town six months or more without first obtaining a statement from the tax collector that no tax liens, tax assessments or other assessments are levied against the mobile home. The person shall further ensure that all licenses and permits necessary have been obtained prior to movement of this structure.

6.8.2.11.2 Violations

A person who violates this section shall be punished to the full extent of the law

6.8.2.12 Park License

A park license shall be issued by the Board of Selectmen when the Board is satisfied as to the conformance of the manufactured home, house trailer or mobile home park with the provisions of this article. No manufactured home, house trailer or mobile home is to be located on any site within a manufactured home, house trailer or mobile home park until a park license covering that site has been issued by the Board of Selectmen. There shall be no charge for the initial license, which shall cover the period from the date of the granting of the license to the following May 1. Licenses shall be renewable annually on May 1, with an annual fee of \$50.00. An annual list of all mobile home owners as of April 1 shall be submitted to the assessor prior to renewal. If mobile home park owner fails to comply submitting the annual list by renewal date of the license then the Board of Selectmen will impose a fee of \$25.00 per day until park owner complies. Annual licenses shall be required for manufactured home parks, house trailer or mobile home which falls within the definition of this article.

### 6.8.3 Multi-Family Developments: Conversions of Existing Dwellings:

This section governs the conversion of a single family house or buildings accessory into two or more dwelling units, one of which will be occupied by the owner of the property.

6.8.3.1 The addition of a single dwelling unit to an existing residential building shall require only a building permit from the Code Enforcement Officer. The addition of two (2) or more dwelling units to an existing residential building must be reviewed as a subdivision according to the procedures of section 5.2 of this ordinance. In all instances, the requirements of this section shall be applied.

**6.8.3.2 Lot Area Requirements:**

6.8.3.2.1 If served by public sewer:

6.8.3.2.1.1 Minimum lot size for three (3) or fewer dwelling units – None

6.8.3.2.1.2 Minimum lot size for four (4) units -- 40,000 square feet.

6.8.3.2.1.3 Each additional unit over four shall require an additional 5,000 square feet of lot area.

6.8.3.2.2 If the lot is not served by public sewer, each dwelling unit shall require 40,000 square feet of lot area.

6.8.3.3 **Building Standards:** The existing buildings shall not be substantially enlarged. The footprint of existing buildings may be expanded by no more than five (5) percent. An expansion of greater than five percent shall be considered new development, to be reviewed under section 6.8.4 of this ordinance.

6.8.3.4 **Signs:** One sign, not to exceed (3) feet by (4) feet, may be placed identifying the building and advertising vacancies.

6.8.3.5 **Parking:** One off-street parking space shall be provided for each bedroom or studio apartment to be developed, in addition to two spaces for the original dwelling unit. Parking shall not be located between the house and the street, and shall be oriented or screened so that headlights do not provide a nuisance to adjoining residences. No parking or travel ways shall be placed within five (5) feet of any lot line.

6.8.3.6 **Lighting:** A single yard light may be installed to provide illumination for the parking area.

**6.8.4 New Multi-Family Development**

This section governs development which is proposed to differ from conventional subdivisions in that three (3) or more dwelling units are proposed to be placed within a building. In addition to the design standards of section 6.7 of this ordinance, multi-family development shall comply with the following standards.

**6.8.4.1 Lot Area Requirements:**

6.8.4.1.1 On sites served by the public sewer system, a multi-family development shall contain no more than one dwelling unit per 10,000 square feet, except as provided in subsection (2) below.

- 6.8.4.1.2 On sites served by the public sewer system, the planning board may permit an increase in density to no greater than one unit per 5,000 square feet where the applicant demonstrates legally binding restrictions limiting occupancy of the dwelling units to affordable incomes (as defined) or seniors.
- 6.8.4.1.3 On sites not served by the public sewer system, a multi-family development shall contain no more than one dwelling unit per 24,000 square feet.
- 6.8.4.2 **Parking:** The development shall comply with the standards of section 6.7.14 of this ordinance for parking and circulation, except that the requirement of section 6.7.14.3 for 1.5 parking spaces per unit may be reduced to one space per unit where the applicant demonstrates legally binding restriction limiting occupancy of the dwelling units to seniors.
- 6.8.4.3 **Garages, sheds, and other accessory buildings** shall be located to side or rear of the principal buildings and shall be placed so as not to inhibit the access of emergency vehicles to the principal building.
- 6.8.4.4 **Recreation Areas:** Recreational space shall be provided within a multi-family development in the amount of no less than ten (10) percent of gross floor area of all principal buildings. The recreation space shall be useable for active or passive recreation. The planning board may require the developer to make improvements to support active or passive recreation, based on the anticipated nature of the multi-family occupants.
- 6.8.4.5 **Condominiums:** If the multi-family development will be a condominium form of ownership, the applicant shall submit proposed articles of incorporation for a condominium association, providing for adequate maintenance of all common fixtures and property.

## 6.8.5 **Wireless Communications Facilities**

This section governs communications towers, receivers, and associated facilities used primarily for commercial purposes. Personal communication antennae and support structures, including but not limited to satellite dishes for home use, and ham radio antennae, are not subject to the standards of this section.

- 6.8.5.1 **Dimensional Requirements:** All facilities shall comply with the dimensional requirements of section 4.1 of this ordinance for the creation of new lots, unless superseded by the standards of this section. Dimensional requirements do not apply to leased land.
- 6.8.5.2 **Setbacks.** Towers shall be set back from street rights-of-way and property lines by a distance equal to the height of the tower, plus ten (10) feet or by a distance equal to 110 percent of the height of the tower, whichever is greater. All tower supports and peripheral anchors shall be located entirely within the boundaries of the property and shall be not less than ten (10) feet from the property line.
- 6.8.5.3 **Height:** Towers may not exceed the height of 150 feet above ground surface. The height shall be measured from the natural, undisturbed ground surface below the center of the base of the tower to the top of the tower structure *exclusive* of antennae or equipment to be mounted on the tower.

- 6.8.5.4 **Structural Requirements:** No facility shall be designed and/or sited such that it poses a potential hazard to nearby residences or surrounding properties or improvements. Any tower shall be designed and maintained to withstand without failure the maximum forces expected from wind, earthquakes and ice when the tower is fully loaded with antennas, transmitters and other equipment, and camouflaging. Initial demonstration of compliance with this requirement shall be provided by submission of a report prepared by a structural engineer licensed by the State of Maine describing the tower structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed.
- 6.8.5.5 **Visual Impacts:** All facilities shall employ materials and colors that blend with the surroundings. They shall be initially painted and thereafter repainted as necessary with a non-reflective “flat” paint. The color selected shall be one that will minimize their visibility to the greatest extent feasible. Vegetative buffering must be provided to screen the facility, at ground level, from adjacent land uses. Any facility located on one of the town’s ridgelines identified as a visual resource in the Comprehensive Plan shall be placed so as to minimize its silhouette against the sky. No tower shall be installed within two miles of another tower unless it is planned and permitted as a multiple-user site, or camouflaged so as to simulate a natural feature of the environment.
- 6.8.5.6 **Lighting:** All facilities shall be unlit except for a manually operated or motion-detector controlled light above the equipment shed door which shall be kept off except when personnel are actually present at night.
- 6.8.5.7 **NIER Exposure:** Communications facilities may not emit unsafe levels of non-ionizing electromagnet radiation (NIER) levels beyond the tower site’s boundaries. No facility or combination of facilities shall produce at any time power densities at property lines that exceed the ANSI C95.1-1992 standard for human exposure.
- 6.8.5.8 **Co-location and Multiple Use of Sites:** All co-located communication facilities and multiple-user sites shall be designed to promote facility and site sharing. Towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities and equipment buildings shall be shared by site users when this will minimize overall visual impact.
- 6.8.5.9 **Security:** Security measures, in accordance with industry standards, shall be placed no less than fifty (50) feet from the base of all towers, guide wires, buildings, and other structures associated with the development.
- 6.8.5.10 **Removal:** Tower operators shall notify the CEO within sixty (60) days of the facility going out of operation of their intention for the tower in the future. If there is no future use intended for the tower, it must be dismantled and removed from the site within twenty-four (24) months after the tower is no longer in use. If the tower is not removed, the Town may cause the removal of the tower. The cost of such removal shall be placed as a lien against the subject property.



## **6.8.6 Commercial Wind Energy Conversion Systems**

This section governs wind energy systems with a rated output of more than 100 kW, installed for the primary purpose of sale of the energy.

### **6.8.6.1 Setbacks:**

6.8.6.1.1 If a facility is to be sited on existing farmland, towers shall be a minimum setback distance from all surrounding property lines equal to 1.25 times the height of the tower. No structural development other than that directly connected with the facility, will be permitted in the setback zone.

6.8.6.1.2 Facilities on non-farmland will be required to meet a minimum setback distance from all property lines equal to 1.5 times the height of the tower plus the length of one blade.

6.8.6.2 The minimum distance between the ground and any part of a rotor blade system shall be fifty (50) feet.

6.8.6.3 Towers shall not be artificially lighted, except as required by the FAA or other applicable authority. All lights shall be designed to minimize visibility from the ground to the extent allowed by the FAA or other applicable authority.

6.8.6.4 Turbines shall have an automatic braking, governing, and/or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades and turbine components caused by extremely high winds, icing or other weather phenomena.

6.8.6.5 The tower and all ground-level equipment such as guide wires, transformers, and substations shall be enclosed within a security fence at least eight (8) feet in height.

6.8.6.6 Towers and turbines shall not contain advertising except for reasonable identification of the manufacturer or operator of the wind energy facility. Appropriate warning signs shall be placed on electrical equipment and facility entrances.

6.8.6.7 Visual Impacts: All facilities shall employ materials and colors that blend with the surroundings insofar as possible. They shall be initially painted and thereafter repainted as necessary with a non-reflective “flat” paint. The color selected shall be one that will minimize their visibility to the greatest extent feasible. Vegetative buffering must be provided to screen the facility, at ground level, from adjacent land uses. Any facility located one of the town’s ridgelines identified as a visual resource in the Comprehensive Plan shall be placed so as to minimize its silhouette against the sky.

6.8.6.8 The facility shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey, such as a) electrical equipment boxes on or near the ground that can provide shelter and warmth, or b) horizontal perching opportunities on the towers or related structures.



### 6.8.7 Small Wind Energy Systems

This section governs wind energy systems with a rated capacity of not more than 100 kW, used primarily for residential or agricultural purposes, and with an installed height of thirty-five (35) feet or more.

- 6.8.7.1 **CEO Permit Required:** A building permit issued by the CEO is required prior to construction. Applications for a permit shall include the following elements:
- a. Site plan to scale, showing the location of the proposed system and the locations of all existing buildings, structures and property lines.
  - b. An elevation drawing of the facility to scale showing the height, design and configuration of the system in relation to existing structures, buildings, electrical lines and property lines.
  - c. Standard drawings and an engineering analysis of the systems tower including weight capacity.
  - d. A standard foundation and anchor design along with soil conditions and specifications for the soil conditions at the site.
  - e. Specific information on the type, size, rotor material, rated power output, performance, safety and noise characteristics of the system including the name and address of the manufacturer.
  - f. Emergency and normal shutdown procedures.
  - g. Verification that the installation conforms to all applicable electrical codes and will be installed by a licensed professional.
  - h. Evidence that the provider of electrical service to the property has been notified of the intent to install an interconnected electricity generator unless the system will not be connected to the electricity grid.
- 6.8.7.2 **Minimum Lot Size.** No wind energy system shall be erected on any lot less than one acre in size.
- 6.8.7.3 **Total Height and Setback:** The structure shall be setback from all occupied buildings and property lines a minimum of 1.1 times the height of the structure, unless the building is occupied by the person who will own the system.
- 6.8.7.4 **Multiple Systems.** The addition or expansion of additional systems which cause the overall capacity to exceed 100 kW shall require review as a commercial system under the requirements of section 6.8.6.
- 6.8.7.5 **Minimum Blade Clearance:** The minimum clearance of the lowest extent of a turbine blade shall be 20 feet above the ground or 20 feet above the highest point of any structure or obstacle within 20 feet from base of the turbine.
- 6.8.7.6 **Access:** No tower shall have a climbing apparatus within 12 feet of the ground. All access doors or access ways to towers and electrical equipment shall be lockable.
- 6.8.7.7 **Noise:** The installation shall comply with the standards of section 6.7.18 of this ordinance.

- 6.8.7.8 **Visual Appearance:** The system shall be finished in a rust-resistant, non-obtrusive finish and color that is non-reflective. Systems shall be lighted only if required by Federal Regulations. No advertising signs of any kind or nature shall be permitted on the system.
- 6.8.7.9 **Electrical Interconnections.** All electrical interconnection or distribution lines shall be underground, unless attached to a building, and comply with all applicable codes and public utility requirements.
- 6.8.7.10 **Signal Interference:** Efforts shall be made to site the system to reduce interference with television and other communication signals. No system shall cause permanent and material interference with television or other communication signals.
- 6.8.7.11 **Overspeed Controls.** Every small wind energy system shall be equipped with both manual and automatic over speed controls.
- 6.8.7.12 **Abandonment:** If the CEO determines that a system has been abandoned, the Owner of the system shall remove it within six (6) months of notification.
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## 7: Definitions of Terms

All words and terms not defined herein shall carry their customary and usual dictionary meaning. Words used in the singular shall include the plural. Words referring to the present tense shall include the future. References to “person” or “he” shall include persons of all gender.

**Abutting Property** – Any property with one or more common boundaries, or across the street or stream from, a parcel of land. An *Abutter* is the owner of abutting property.

**Accessory Structure or Use** – A use or structure which is incidental and subordinate to the principal use or structure. A deck or similar extension of the principal structure, or a garage attached to the principal structure by a roof or a common wall, is considered part of the principal structure.

**Aggrieved Party** – An owner of land whose property is directly or indirectly affected by the granting or denial of a permit under this Ordinance; a person whose land abuts land for which a permit has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit.

**Agriculture** – The production, keeping, or maintenance of plants or animals for sale, lease, or personal use. The practice of agriculture, for the purposes of this ordinance, includes the erection and use of buildings and structures for the sale or storage of goods produced on the premises, but does not include value-added processing, or the sale of goods primarily produced off premises.

**Affordable Housing** - Housing units which are constructed with the intent to sell and/or legally constrained to households with *affordable incomes*: eighty (80) percent or less of the median household income for Kennebec County, as reported by the US Department of Housing and Urban Development.

**Applicant** - Any person applying for approval under this ordinance.

**Buffer Area** - A portion of a property or an entire property specifically intended to separate and thus reduce the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources. A buffer area is generally unimproved, except that improvements consisting of landscaping, fencing, earth-mounding or other similar devices, may be installed and maintained.

**Building** – Any three-dimensional structure which is used or intended for use for the enclosure of persons, animals, or property.

**Building Envelope** – A space designated on a subdivision or development plan within which a structure is permitted to be built. The building envelope is intended to exclude setbacks, buffer areas, wetlands, and other areas where development is not legally permitted. The appearance of a building envelope on an approved development plan constitutes a commitment to develop only within the designated envelope.

**Building Height** – The vertical distance between the base of a building, measured at the average grade level of the foundation, and the top of the building, measured at the roof eave of the highest floor.

**Cluster or Open Space Subdivision** - A subdivision in which the lot sizes are reduced below those normally required in return for the provision of permanent open space.

**Commercial Use** – The use of lands, buildings, or structures, other than as a home-based business, for the production of income from the production, buying, or selling of goods or services.

**Common Open Space/ Common Property** - Land or improvements within or related to a subdivision, which are not individually owned, and are designed and intended for the common use or enjoyment of the residents of the development or the general public.

**Complete Application** - An application shall be considered complete upon submission of the fee and all information required by this ordinance, with the exception of specified information for which the Planning Board votes to waive the requirements.

**Comprehensive Plan** – The most recently adopted version of the Town of Monmouth Comprehensive Plan.

**Conservation Easement** - A non-possessory interest in real property imposing limitation or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting specific natural resources; or maintaining air or water quality.

**Critical Natural Area** – Any geographic area identified by the Comprehensive Plan or by the Maine Department of Conservation Natural Areas Program, or successor agency, as containing plant or animal life or geological or ecological features worthy of preservation in their natural condition.

**Density** - The number of residential units per acre of land.

**Developed Area** - Any area on which a site improvement or change is made, including buildings, parking areas, and streets.

**Development** – Any intentional change to improved or unimproved real estate, including but not limited to the construction of buildings or other structures, the construction of additions or substantial improvements to buildings or other structures, or activities that create an intensification of land use or an increased demand for public services. A *Development Plan* is a scale drawing of the area to be developed, including accurate representations of all structures and improvements, and incorporating attachments and subsidiary plans.

**Development Rights** – The legal right to be able to place a development on property.

**Dimensional Standards** – Rules within this ordinance governing the size and location of structures, including lot area, setbacks, separation distances, lot coverage, and building height.

**Direct Watershed of a Great Pond** - That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of this ordinance, the watershed boundaries shall be as delineated in the comprehensive plan. Due to the scale of the map in the comprehensive plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to the exact location of a watershed boundary that cannot be resolved based on an on-site investigation, the burden of proof shall lie with the applicant to provide the Planning Board with information from a registered land surveyor showing where the drainage division lies.

**Driveway** - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**Dwelling** - Any building or portion thereof designed or used for human habitation. A *Single family dwelling* consists of one dwelling unit within a single building. A *Two family dwelling* contains two dwelling units within a single building. A *Multi-family dwelling* contains three or more dwelling units within a single building.

**Dwelling unit** - A room or suite of rooms which encompasses interconnected living, cooking, sleeping, and sanitary facilities, designed for use by a single household.

**Earth** – Topsoil, sand, gravel, clay, peat, rock, or other materials.

**Earth Moving** – Earth including all aggregates extracted from a property, introduced to a property or relocated from an area within a property to another area within the same property.

**Electronic Message Sign** – A sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed at regular or periodic intervals.

**Engineered Subsurface Waste Water Disposal System** - A subsurface waste water disposal system designed, installed, and operated as a single unit to treat 2,000 gallons per day or more; or any system designed to treat waste water with characteristics significantly different from domestic waste water.

**Expansion** - Any increase in the size of an existing building or development which results in greater floor area, increased traffic generation, or increased capacity.

**Flag lot** – A parcel of land with less than the minimum frontage on a public road situated to the rear of an existing lot with the required minimum road frontage and area. A Flag lot consists of two parts: 1) a corridor from a public road for access and utilities and 2) a lot of at least minimum width and area for residential purposes only.

**Frame** – A complete, static display screen on an electronic message sign.

**Frame Effect** - A visual effect used on electronic message signs to transition from one message to another.

**Forest Management** – Practices involved in the cultivation and harvesting of wood products. The term includes management practices, thinning and pruning, forest road building, tree-cutting and chipping or rough milling on-site, but does not include permanently established sawmills, pellet foundries, chipmills, or transportation operations.

**Fresh Water Wetland** - Areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and which are not part of a great pond, river, stream or brook. Fresh water wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

**Frontage, Street** - The horizontal, straight-line distance between the point of intersection of the side lot lines with the street right-of-way. *Shore Frontage* is the horizontal, straight-line distance between the point of intersection of lot lines and the normal high water mark of a regulated water body.

**Gross Floor Area (GFA)** – The sum of the gross area all habitable areas of a building or buildings measured from the exterior walls or from the center lines of walls separating two separately-used spaces.

**Hazardous Materials** – Any waste as designated by the Maine Board of Environmental Protection in Chapter 850 of their rules under the authority of 38 MRSA, Section 1301, et seq. Generally a hazardous waste exhibits one of the following characteristics: ignitability, corrosivity, reactivity and toxicity.

**High Intensity Soil Survey** - A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

**Home-Based Businesses** – A business, occupation, trade or profession which is carried on on the same parcel of land as a single-family dwelling by a full-time permanent occupant of the dwelling. Such business concerns do not meet the definition of a home occupation, but, with the exception of farms, must conform to the following criteria:

Employees – does not employ more than 4 non-resident employees;

Size – does not utilize a structure larger than 2,000 square feet total;

Noise – does not result in noise levels at the lot lines that exceed those of a residential neighborhood;

Odors – does not result in detectable odors beyond the lot lines;

Parking – does not exceed 10 parking spaces to serve both employees and customers; and

Hazardous materials – if utilized in the business, meets any applicable State or Federal regulations.

Home-based businesses will be reviewed by the Code Enforcement Officer under the provisions of section 5.1.2.1 unless the Planning Board concludes that specific concerns raised by the nature of the activities require that they be reviewed as major developments.

**Home Occupation** – A business, occupation, trade or profession which is carried on in no more than 25% of the ground area of a dwelling unit or structure accessory to a dwelling unit by a permanent occupant of the dwelling, which does not employ more than 1 non-resident employee, which is clearly incidental and secondary to the use of the property for residential purposes, and which does not change the essential residential character of the property.

**Impact Fee** – A fee established by town ordinance which allocates the cost of improvements to shared public services among multiple developers.

**Impervious Surface** – Any hard-surfaced, human-made area that does not readily absorb or retain water, including but not limited to building roofs, paved or graveled parking and driveway areas, sidewalks and paved recreational facilities.

**Industrial Uses** – Those establishments which create new (or altered) products from raw materials or other products through various processes for ultimate distribution and sale. The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.



**Institutional Uses** – Any establishment serving primarily a governmental, educational, fraternal, or other public function, including schools, municipal and state buildings, fraternal buildings, religious facilities, and the customary grounds, playing fields, parking lots, and other outdoor facilities attendant thereto.

**Level of Service** - A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the Highway Capacity Manual, 1985 edition, published by the National Academy of Sciences, Transportation Research Board. There are six levels of service ranging from Level of Service A, with free traffic flow and no delays, to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

**Lot Area** – the gross area, in square feet encompassed within a lot or parcel of land.

**Lot Coverage** - The percentage of a lot covered by all buildings and impervious surfaces.

**Lot Lines** - The lines bounding a lot consist of the following:

*Front Lot Line* - Interior lots: the line separating the lot from a street or right-of-way. Corner or through lot: the line separating the lot from either street or right-of-way.

*Rear Lot Line* - The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line.

*Side Lot Line* - Any lot line other than the front or rear lot lines.

**Lot of Record** – A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map or, file with the Kennebec County Register of Deeds.

**Manufactured Housing** - A structural unit or units designed and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. For the purposes of this Ordinance, three types of manufactured housing are included. Those are:

1. Those units constructed after June 15, 1976, commonly called *newer Manufactured Housings*, which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which, are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit. This term also includes any structure which meets all the requirements of the preceding paragraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the U.S. Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, USC, Title 42, Section 5401, et seq.;
2. Those units commonly called *modular homes*, which the manufacturer certifies are constructed in compliance with Title 10, Chapter 957, United States Code, and rules adopted under that chapter, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwelling, on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical system, contained in the unit; and
3. Those units called *older Manufactured Housings*, "house trailers" and "trailers," which are terms that may be used interchangeably, and mean any factory built home which fails to meet the definition of "newer Manufactured Housings" above.



**Medical Care Facility** – A commercial operation which has as its primary purpose the physical or psychological care of persons on a in-patient basis, including, but not limited to, hospitals, rest homes, nursing homes, treatment centers.

**Mixed Use** – The use of property for a combination of a residential with any non-residential purpose. The uses may be within the same building or on the same premises.

**Manufactured Housing Park** - A parcel of land under unified ownership approved by the Town for the placement of 3 or more manufactured homes. The *Manufactured Housing Park Lot* is the area of land on which an individual manufactured home is situated within a Manufactured Housing park; and which is reserved for use by the occupants of that home. All individual Manufactured Housing park lots shall be designated on an approved plan for a Manufactured Housing park.

**Manufactured Housing Subdivision** - A parcel of land approved by the Town for the placement of manufactured homes on individually owned lots.

**Multi - Family Development** - A subdivision consisting of three (3) or more dwelling units within a each proposed building..

**Nonconforming** - A building, structure, lot, use of land, or portion thereof, existing on June 26, 1993, or the effective date of an amendment of this Ordinance which thereafter fails to conform to all applicable provisions of this Ordinance.

**Occupancy** – The commencement of use of the building or structure for the purpose for which it was erected. A home or business is considered to be *occupied* from the time when the owner or tenant begins to use the property for its primary purpose on a regular basis.

**Permanent Foundation** - The term means all of the following:

1. A full poured concrete or masonry foundation;
2. A poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor;
3. A reinforced floating concrete pad, and
4. Any foundation which meets the standards of the Maine Uniform Building Code for one- and two-family dwellings.

**Pitched Shingled Roof** --A roof with a pitch of 2 or more vertical units for every 12 horizontal units of measurement and which is covered with asphalt or fiberglass composition shingles or other materials, but specifically excludes corrugated metal roofing material.

**Principal Building or Structure** – The building or structure occupied by the principal use of the premises.

**Principal Use** – The primary use to which the premises are devoted and the main purpose for which the premises exist.

**Professional Engineer** - An engineer, registered to practice in the State of Maine.

**Public Water System** - A water supply system that provides water to at least fifteen (15) service connections or services water to at least twenty-five (25) individuals daily for at least thirty days a year.

**Recreational Area or Facility** – A place designed and equipped for the conduct of indoor and/or outdoor sports, leisure time activities and other customary and usual recreational activities.

**Retail business** – A commercial operation which has as its primary purpose the sale of goods or merchandise to the general public for personal or household consumption and rendering of services incidental to those goods. The term includes among other things grocery stores, discount stores, gas stations, the sale of live vegetation, and take-out food service.

**Right-of-way** – All public streets, state and federal highways, private ways and easements, and public land reservations for the purpose of public access, including utility rights-of-way.

**Seating Capacity** – The maximum permissible occupancy of any public building, including restaurants, meeting rooms, and places of public assembly, as designated by the State Fire Marshal or code requirements.

**Setback** -- The minimum horizontal distance from a lot line or shore line to the nearest part of a building or other regulated structure.

**Sight Distance** - The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Sight distance is measured from a point 3.5 feet above ground level ten feet behind the edge of the road to a point 4.25 feet above ground level in the travelled way.

**Sign** – Any object, device, display, or structure, or part thereof, which is used to advertise, identify, or otherwise attract attention to the existence or location of a business, service, merchandise, organization or public use of a property through the use of words, figures, designs, or symbols. A *free-standing sign* is one which is not directly attached to a building.

**Sketch Plan** - Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for development approval.

**Street** - Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as right-of-way for vehicular access other than driveways.

A *State highway* is one of the major thoroughfares which serve as traffic ways for travel between and through Monmouth and have seasonal or year-round maintenance by the State of Maine. State highways include US 202, Maine Routes 9/126, 132, and 135, Maple Street, and Cobbosseecontee Road.

A *Local Street* (town way) is a street that is maintained year-round by the Town of Monmouth.

A *Private Street* is a street that is not owned or maintained by the Town or the State, regardless of whether the general public is entitled to access upon it.

A *cul-de-sac* is a circular turn-around at the end of a dead-end street.

**Structure** – Anything constructed or erected, the use of which requires a fixed location on or in the ground or in the water, or an attachment to something having a fixed location on the ground. The term includes, but is not limited to, buildings, commercial display and storage areas, carports, porches, and other building features, including stacks and antennas, but does not include sidewalks, driveways, fences, patios built at grade level, and field, garden, or retaining walls. The definition of structure excludes Sub-Surface waste disposal.

**Structural Change** – The cutting, adding to or otherwise altering of any support beams or materials necessary to maintain structural integrity of a building.

**Substantial Start** – The installation of all foundation walls, pilings and first floor deck, or installation of a subsurface wastewater disposal system for a building or structure.

**Subdivision** – A division of land or buildings as provided in Maine statute, 30-A MRSA, § 4401(4). A *non-conventional subdivision* is any subdivision that does not result in the creation of new lots meeting the dimensional standards of this ordinance.

**Temporary Structures** – Temporary structures are not attached to any permanent sub structure and include but are not limited to Canvas Garages, Tents, Summer Screen Houses.

**Time and Temperature Sign** – A type of electronic message sign which displays only public service information such as time, date, and temperature, and which does not display within the frame any symbols or advertising messages.

**Tract or Parcel of Land** - All contiguous land in the same ownership, whether or not the tract is separated at any point by: an intermittent or non-navigable stream or a private street established by the abutting land owners.

**Usable Open Space** - That portion of common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture.

**Use** - The purpose for which land or building or structure or a part thereof is arranged, designed, intended or occupied.

**Variance** – Judicial relief from dimensional standards of this ordinance granted by the Board of Appeals under specific conditions and following a public hearing.

**Vernal Pool** – An area of land which, by reason of seasonal high water table, supports specific groupings of plant and animal life, as identified under guidelines promulgated by the Maine Department of Environmental Protection.

**Wireless Communications Facility** – A tower or other structure mounted with antennae for the purpose of broadcasting or relaying signals for commercial communications services, including commercial radio and television, telephonic, and similar services. The term includes support structures, antennae, maintenance buildings, and all other buildings and structures associated with the service.

**Wind Energy Conversion System** – A structure built for the purpose of converting the kinetic energy of wind into electrical energy. The term includes all towers, turbines, support structures and machinery associated with the conditioning and provision of wind energy to the electrical system. A *Small Wind Energy System* is one which is used primarily for residential or agricultural use and has a rated capacity of less than 100 kilowatts.

# **Comprehensive Development Ordinance**

## **Changes 2012**

- 1) Change Mobile Home to Manufactured Housing Throughout Document
- 2) Put non-conforming put in own chapter - New chapter 3 and Renumber throughout the rest of the ordinance
- 3) Renumbered Section 4.1.1.1 - reduce minimum lot size on public sewer from 20,000 to 15,000 Sq. Ft.
- 4) Renumbered Section 4.1.2.1 - reduce minimum road frontage on public sewer from 100 to 75 ft
- 5) Renumbered Section 4.1.2.1 - remove the word public so section applies to all roads
- 6) Renumbered Section 4.1.2.3 - Change language so it applies to all lots
- 7) Renumbered Section 4.1.2.4 - Change language so it applies to all lots
- 8) Renumbered Section 4.1.3.1 - Change language to make setbacks easier to understand
- 9) Renumbered Section 4.1.3.2 - Change language to make setbacks easier to understand
- 10) Renumbered Section 4.1.3.4 - Change language to make setbacks easier to understand
- 11) Renumbered Section 4.1.4.1 - Change language to make lot coverage easier to understand
- 12) New Section 4.1.6 – Flag Lots – Requirements for flag lots
- 13) Renumbered Section 5.1.1 – Insert language to authorize Double Fee for failure to get a building permit
- 14) Renumbered Section 6.1.2.1 – Change Development Review Options from 2000 to 5000 sq. ft. as in previous ordinance. Changed Parking from 1000 to 2000 sq. ft. added a new Requirement for Business to single family residential conversions.
- 15) Renumbered Section 6.1.2.2 – Change Development Review Options from 2000 to 5000 sq. ft. as in previous ordinance. Changed Parking from 1000 to 2000 sq. ft.
- 16) Renumbered Section 6.4.1.5h – Changed language to give planning board greater latitude in accepting runoff calculation from qualified individuals or agency's or engineering firms.
- 17) Renumbered Section 6.7.3.3 – Changed language to give planning board greater latitude in accepting runoff calculation from qualified individuals or agency's or engineering firms.
- 18) Renumbered Section 6.8.1.2.1 – Changed development Served by public sewer to street frontage of 75 ft. to conform to other sections of ordinance.
- 19) Renumbered Section 6.8.2 – Change language to allow Senior Citizens to own their lot
- 20) Renumbered Section 6.8.2 – Other Changes in sub section of this section to clarify ownership, lot size, dimensional requirements, display for sale, movement and other requirement for manufactured housing parks.
- 21) Renumbered Section 6.8.3 – Clarify Language
- 22) Renumbered Section 6.8.5.1 – Clarify that dimensional requirements do not apply to leased land but to the entire lot the land is leased from.
- 23) Renumbered Section 6.8.6.1.3 – This section is not necessary.
- 24) Renumbered Section 6.8.7.3 – Remove windmill tower height restriction
- 25) Renumbered Section 6.8.7.4 – Ease multiple install restriction on non-commercial systems.
- 26) Renumbered Section 6.8.7.8 – Higher towers may require lighting per federal regulations.
- 27) Added Definition for flag lot.

# **Comprehensive Development Ordinance Changes 2015**

- 1) Deleted Section 4.1.3.2.1 – 70 Foot Setback on Rte. 202
- 2) New Section 4.1.7 Unbuilt Lots of Record
- 3) Section 5.4.4.4 – Added Carbon Monoxide and Heat Detectors
- 4) Section 6.1.2.1 – Removed Redundant Wording and Corrected inconsistent Size Requirement
- 5) Section 6.4.1.4 – Added new section q to comply with State law.

# Proposed Town of Monmouth Consumer Fireworks Ordinance

## Article I Purpose

The purpose of this Ordinance is to restrict the use of consumer fireworks in order to protect public health, safety, and welfare and to ensure the peaceful enjoyment of private and public property in the Town of Monmouth.

## Article II Title and Authority

This Ordinance shall be known as the "Town of Monmouth Consumer Fireworks Ordinance." It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S.A. section 3001, and the provisions of P.L. 2011, ch.416, section 5 (effective Jan. 1, 2012), *codified at* 8 M.R.S.A. section 223-A.

## Article III Definitions

Consumer fireworks: "Consumer fireworks" has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
- C. Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

## Article IV Use of Consumer Fireworks Restricted

No person shall use, ignite, fire, or cause to be exploded consumer fireworks within the Town of Monmouth except in compliance with all federal, state and local laws, ordinances, rules and regulations.

The use of consumer fireworks within the Town of Monmouth is further restricted as follows:

### A. General Restrictions

1. The Town assumes no liability for injuries or destruction of property that results from the use of consumer fireworks.
2. A person shall use consumer fireworks only on that person's property or on the property of a person who has consented to such use. Consumer fireworks may not be used on, in or from any watercraft located within the waters of the Town.
3. The use of consumer fireworks on public property, including roadways, is prohibited.
4. Consumer fireworks shall not be used within fifty (50) feet of any combustible structure, overhead power lines, public right of way, or forest. In addition, consumer fireworks shall not be used within two hundred and fifty (250) feet of a licensed daycare, school, church, gas station, or any business which distributes liquid fuels, or a pasture with livestock present.
5. A person shall not use consumer fireworks on any day that the forest fire danger is a Class 4 or Class 5

# Proposed Town of Monmouth Consumer Fireworks Ordinance

as specified by the Maine Forestry Service.

## A. Days and Hours of Use

1. The use of consumer fireworks is restricted to only the following days of the year: July 3, July 4, July 5, December 31, January 1, Memorial Day, the two days prior to Memorial Day, Labor Day, and the two days prior to Labor Day.
2. Consumer fireworks may only be used between the hours of 5 pm and 10 pm.
3. The use of fireworks that have a negligible sound effect (not to exceed 45 decibels) such as sparklers, morning glory's, and fountains to be used any day of the year, as long as they are used in accordance with the other provisions of the ordinance.

## Article V Violation and Enforcement

1. **Penalty for Use Violation:** Any person who violates the provisions of this Ordinance shall commit a civil violation punishable by a penalty of not less than Two Hundred Dollars (\$200.00) and not more than One Thousand Five Hundred Dollars (\$1500.00) for each offense, plus attorney's fees and costs, to be recovered by the Town of Monmouth for its use. Each day a violation occurs or continues to occur shall constitute a separate violation.
2. **Enforcement:** This Ordinance shall be enforced by the Town of Monmouth Police Department.
3. **Injunction:** In addition to other remedies available at law or equity, the Town may apply to any court of competent jurisdiction to enjoin any planned, anticipated, or threatened violation of this Ordinance and to prohibit further and continued violation thereof.
4. **Seizure and Disposal of Consumer Fireworks:** the Town may seize consumer fireworks that the Town has probable cause to believe are used or sold in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal.
5. **Exceptions:** Pursuant to 8 M.R.S.A. section 221-237, particularly section 227-A, nothing in this Ordinance shall be construed to limit or regulate commercial fireworks displays or the issuance of permits for fireworks displays by the Commissioner of Public Safety or a designee.

## Article VI Severability

If any section, subsection, sentence, clause of phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the Ordinance.

## Article VII Effective Date

This ordinance shall take effect on Jan 1, 2013.



FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE  
TOWN OF MONMOUTH, MAINE

ENACTED: 04/28/98  
Date

CERTIFIED BY STEVEN A. DYER  
Name

TOWN CL ERK  
Title

60.3 (c)  
Printed 3/24/98

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## FLOODPLAIN MANAGLMENT ORDINANCE

### **ARTICLE I - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Monmouth, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of federally subsidized flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Monmouth, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Monmouth, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

This body has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRS,A, Sections 3001-3007, 4352 and 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Monmouth having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes, a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Monmouth, Maine.

The areas of special flood hazard, Zones A and AI-30, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Monmouth, Maine, Kennebec County," dated March, 1980 with accompanying "Flood Insurance Rate Map" dated September 3, 1980 is hereby adopted by reference and declared to be a part of this Ordinance.

### **ARTICLE 11- PERMIT REQUIRED**

Before any construction or other development (as defined in Article XI11), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. T his permit shall be in addition to any other building permits which may be required pursuant to the codes and ordinances of the Town of Monmouth, Maine.

### **ARTICLE 111- APPLICATION FOR PERMIT**

T he application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. Title name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing; location of existing and/or proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items I I-EC apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones A1-30, from data contained in the "17lood Insurance Study Town of Monmouth, Maine," as described in Article I; or,
    - b. in Zone A, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building;
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
  - 4. level, in the case of non-residential structures only, to which the structure will be flood proofed;
- I. A description of an elevation reference point established on the site of all new or substantially improved structures;
- J. A written certification by a Professional Land Surveyor that the elevations shown on the application are accurate;
- K. Certification by a registered professional engineer or architect that flood proofing for any non-residential structures will meet the flood proofing criteria of Article III.II..4; Article VI.G and other applicable standards in Article VI;

methods

- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV – APPLICATION AND EXPERT’S FEE**

A non-refundable application fee of \$75.00 shall be paid to the Town Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation, of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. . An applicant who is dissatisfied with a decision of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

#### **ARTICLE V - REVIEW OF FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed Building sites are reasonably safe from flooding,, and to assure that all pertinent requirements of Article VI (Development Standards) have, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications, the base flood data contained in the "Flood Insurance Study - Town of Monmouth, Maine," as described in Article I. In special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other sources, including information obtained pursuant to Article III.II.1.b.; Article VI.J.; and Article VIII.D., in order to administer Article VI of this Ordinance;
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including, but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. Issue one of the following Flood Hazard Development Permits based on the type of development:
  - 1. Issue a two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with a second Elevation Certificate completed by a Professional Land Surveyor based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
  - 2. Issue a Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
  - 3. Issue a Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, or renovations, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, towers, fencing, and pipelines.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article IX of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. New construction or substantial improvement of any structure and all other development shall
  - 1. be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - 2. use construction materials that are resistant to flood damage;
  - 3. use construction methods and practices that will minimize flood damage; and,
  - 4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- B. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. All development shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying; capacity of any watercourse.
- F. New construction or substantial improvement of any residential structure located within:
  - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  - 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.I.b; Article V.B; or Article VIII.D.
- G. New construction or substantial improvement of any non - residential structure located within:
  - 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;



- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  - 2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article VIII.D., or
    - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G. I.
- H. New or substantially improved manufactured homes located within:
  - 1. Zones AI-30 shall:
    - a. be elevated on a permanent foundation such that the lowest floor is at least one foot above the base flood elevation; and,
    - b. be securely anchored to an adequately anchored foundation system to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
      - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
      - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
      - (3) All components of the anchoring system described in Article VI, paragraph H.1.b.(1)&(2) shall be capable of carrying a force of 4800 pounds.
    - a. at least one foot higher than the depth specified in feet on the community's Flood Issuance Rate Map; or,
    - b. at least three feet if no depth number is specified; and,

2. Zone A shall:
  - a. be elevated on a permanent foundation such that the lowest floor is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.I.b.; Article V.B; or Article VIII.D.; and
  - b. meet the requirements of Article VI.H.1.b.

I. Recreational Vehicles located within:

1. Zones A1-A30 shall either:
  - a. be on the site for fewer than 180 consecutive days,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking, system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured home" in Article VI.H.I.a.& b.

J. Floodways

1. In Zones A1-30, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in riverine areas, for which a regulatory floodway is designated on the community's "Flood Insurance Rate Map," unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A1-30, riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing; development and anticipated development:
  - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
  - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (I:EMA 37/ January 1995, as amended ).

3. In Zones A 1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain. Encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted unless a technical evaluation certified by a registered professional engineer is provided meeting the requirements of Article VI.J.2.a.&b.
- K. New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
1. Enclosed areas are not "basements" as defined in Article XIII; and,
  2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
    - a. be certified by a registered professional engineer or architect; or,
    - b. meet or exceed the following minimum criteria:
      - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      - (2) the bottom of all openings shall be no higher than one foot above the lowest grade; and,
      - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means; and,
  3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed area may be used for building maintenance, access, parking vehicles, or storing of articles and equipment used for maintenance of the building.

## **ARTICLE VII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  - I. review the Elevation Certificate and the applicant's written notification; and,
  - 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

#### **ARTICLE VIII – REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- E. Any proposed development plan shall include a statement that the developer will require that structures on lots in the development be constructed in accordance with Article VI of this ordinance and that such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

#### **ARTICLE IX - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Monmouth may, upon written application of an aggrieved party, hear and decide appeals and determinations of the Code Enforcement Officer in the

administration of the provisions of this Ordinance. The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
  - 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. other criteria of Article IX and Article VI.J. are met; and,
  - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued by a community for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

1. the development meets the criteria of Article IX, paragraphs A. through D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article IX, paragraphs A through E shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 Per \$100 of insurance coverage;
  2. such construction below the base flood level increases risks to life and property; and,
  3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

#### ARTICLE X – ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
  - 1 the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;

2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **ARTICLE XI - VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

#### **ARTICLE XII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

#### **ARTICLE XIII - DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Adjacent Grade** - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Special Flood Hazard** - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

**Base Flood** - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - means any area of the building having its floor subgrade (below ground level) on all sides.



**Building - see Structure.**

**Certificate of Compliance** - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Code Enforcement Officer** - any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

**Development** - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

**Elevated Building** - means a non-basement building

- a. built, in the case of a building in Zones AI-30, AE, A, AO, or AH, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A 1-30, AE, A, AO, or AH, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded development of flood waters.

**Elevation Certificate** - An official form (FEMA Form 81-31, 05/93, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

**Flood or Flooding** - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. The overflow of inland or tidal waters.
  - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a

natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition,

**Flood Elevation Study** - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - means an official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Flood-prone Area** - means any land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Locally Established Datum** - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI of this ordinance.

**Manufactured Home** - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.

**Minor Development** - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, or renovations, whose value is less than 50% of the market value of the structure. It includes, but is not limited to: mining, dredging, filling, grading,

paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, towers, fencing, and pipelines.

**New Construction** - means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection;
- c. designed to be self-propelled or permanently towable by a light duty truck; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

### **Regulatory Floodway**

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine** - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

**Start of Construction** - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as

dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.

**Variance** - means a grant of relief by a community from the terms of a floodplain management regulation.

**Violation** - means the failure of a structure or development to comply with a community's floodplain management regulations.

#### **ARTICLE XIV - ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

# **PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE**

## **Version 2 – Administration by the Efficiency Maine Trust**

### **PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE.**

#### **PREAMBLE**

WHEREAS, the 124<sup>th</sup> Maine Legislature has enacted Public Law 2009, Chapter 591, “An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act”; and

WHEREAS, that Act authorizes a municipality that has adopted a Property Assessed Clean Energy (“PACE”) Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the City/Town, financed by funds awarded to the Efficiency Maine Trust under the Federal Energy Efficiency and Conservation Block Grant (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program; and

WHEREAS, the Municipality wishes to establish a PACE program; and

NOW THEREFORE, the Municipality hereby enacts the following Ordinance:

#### **ARTICLE I - PURPOSE AND ENABLING LEGISLATION**

##### **§ XX-1 Purpose**

By and through this Chapter, the Town of Monmouth declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy (“PACE”) program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the Town. The Town declares its purpose and the provisions of this Chapter/Ordinance to be in conformity with federal and State laws.

##### **§ XX-2 Enabling Legislation**

The Town enacts this Chapter/Ordinance pursuant to Public Law 2009, Chapter 591 of the 124<sup>th</sup> Maine State Legislature -- “An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act” (codified at 35-A M.R.S.A. § 10151, *et seq.*).

## ARTICLE II - TITLE AND DEFINITIONS

### § XX-3 Title

This Chapter/Ordinance shall be known and may be cited as “the Town of Monmouth Property Assessed Clean Energy (PACE) Ordinance” (the “Ordinance”).”

### § XX-4 Definitions

Except as specifically defined below, words and phrases used in this Chapter/Ordinance shall have their customary meanings; as used in this Chapter/Ordinance, the following words and phrases shall have the meanings indicated:

- 1. Energy saving improvement.** “Energy saving improvement” means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:
  - A. Will result in increased energy efficiency and substantially reduced energy use and:
    - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy, Energy Star program or similar energy efficiency standards established or approved by the Trust; or
    - (2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
  - B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.
- 2. Municipality.** “Municipality” shall mean the Town of Monmouth.
- 3. PACE agreement.** “Pace agreement” means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.
- 4. PACE assessment.** “PACE assessment” means an assessment made against qualifying property to repay a PACE loan.
- 5. PACE district.** “Pace district” means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality’s boundaries.



**6. PACE loan.** “PACE loan” means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.

**7. PACE mortgage.** “PACE mortgage” means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.

**8. PACE program.** “PACE program” means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.

**9. Qualifying property.** “Qualifying property” means real property located in the PACE district of the Municipality.

**10. Renewable energy installation.** “Renewable energy installation” means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

**11. Trust.** “Trust” means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

### **ARTICLE III - PACE PROGRAM**

**1. Establishment; funding.** The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust’s administration of the municipality’s PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality’s PACE program.

**2. Amendment to PACE program.** In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources.

## **ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST**

**1. Standards adopted; Rules promulgated; model documents.** If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

## **ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY**

### **1. Program Administration**

**A. PACE Administration Contract.** Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Municipality will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

- i. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality's PACE district;
- ii. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
- iii. the Trust, or its agent, will disburse the PACE loan to the property owner;
- iv. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
- v. the Trust, or its agent, will be responsible for collection of the PACE assessments;
- vi. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;
- vii. the Trust or its agent on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

**B. Adoption of Education and Outreach Program.** In conjunction with adopting this Ordinance, the Municipality shall adopt and implement an education and outreach program so that citizens of the Municipality are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

**C. Assistance and Cooperation.** The Municipality will assist and cooperate with the Trust in its administration of the Municipality's PACE program.

**D. Assessments Not a Tax.** PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

## **2. Liability of Municipal Officials; Liability of Municipality**

**A.** Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

**B.** Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

## TOWN OF MONMOUTH

### Parking Ordinance

Adopted April 11, 2007

Amended July 18, 2007

Amended September 30, 2015

Amended September 13, 2017

#### **Section 1. Authority**

This Ordinance shall be known as the Monmouth Parking Ordinance. It is enacted to regulate parking within the Town of Monmouth and to provide for the enforcement of regulated parking.

The authority vested in the Board of Selectmen to enact an ordinance to regulate parking in the Town of Monmouth is found in Title 30-A, M.R.S.A., Chapter 141: Ordinances, Section 3009.

This Ordinance is approved by the Board of Selectmen on January 17, 2007.

#### **Section 2. Definitions**

*Motor Vehicle* shall mean any self propelled vehicle not operated exclusively on tracks, including motor cycles and mopeds, but not including aircraft, watercraft or any other vehicle prohibited by law from operating on the public ways.

*Park* shall mean the standing of any vehicle whether occupied or vacant, other than temporary or for the purpose of loading or unloading.

*Person* shall mean any individual, firm, agency, partnership, association, company, corporation or entity.

*Sign* shall mean any sign, traffic control device, signal, marking or other device placed or erected in accordance with this Ordinance for the purpose of warning, regulating, directing or otherwise guiding parking.

*Standing* shall mean any stopping of a vehicle whether occupied or vacant.

*Street* shall mean the entire right-of-way width of any road, highway, avenue, place or way open to the public for use by vehicular traffic.

*Vehicle* shall mean any motor vehicle as defined by Title 29-A, M.R.S.A., section 101.

#### **Section 3. Unlawful Parking**

No person shall allow, permit, or suffer any vehicle, motor vehicle or self propelled machinery under his/her control, or registered in his/her name with the Secretary of State, Bureau of Motor Vehicles to be in violation of any of the following provisions of this Ordinance upon, or in any street, parking area or other public place within the Town of Monmouth so that:

A. It blocks the ingress or egress to any public or private road, driveway or pedestrian crosswalk.

- B. It is double parked, so called, except by permission of the Chief of Police or designee, or except commercial vehicles for the purposed of delivery, pick up or performing other necessary service, but only in such a manner that does not impede the passage of other vehicles.
- C. Any part of said vehicle is in, over or on the area of the sidewalk, or any adjoining or adjacent marked parking space, except as allowed by State Law.
- D. It obstructs or impedes the passing of other vehicles.
- E. It is within ten (10) feet of any fire hydrant.
- F. It is more than two (2) feet from the curb.
- G. It is within twenty (20) feet of the intersection of any street line, except as otherwise provided in the Ordinance.
- H. It is not facing the direction of traffic flow.
- I. It is left to stand or to be parked from November 1 to April 15, inclusive, between the hours of 10 P.M. and 6 A.M.
- J. It is parked in such a manner that interferes with or hinders the plowing, loading, or removal of snow at any time.
- K. U-turns, so called, shall be illegal in areas posted.
- L. Is parked in any marked disabled parking space without a disability registration plate or a temporary disability placard issued by the Secretary of State, Bureau of Motor Vehicles or in violation of Title 29-A, M.R.S.A., section 521 and Title 30-A, M.R.S.A., section 3009.

#### **Section 4. No Parking Zones**

No person shall allow, permit, or suffer any vehicle, motor vehicle or self propelled machinery under his/her control or registered in his/her name with the Secretary of State, Bureau of Motor Vehicles to be parked in any of the following designated "No Parking Zones":

- A. MAPLE STREET - South side from Main Street easterly to the west side of Mud Mill Stream, so called.
- B. BLUE ROAD – Both sides from Main Street westerly for one hundred (100) feet.
- C. ACADEMY ROAD- West side from Main Street northerly for one hundred (100) feet. East side from Main Street northerly seventy five (75) feet. East side from intersection of Norris Hill Road southerly for six hundred and forty (640) feet. West side from entrance to the Middle School southerly for one hundred and seventy six (176) feet to the Monmouth Academy property line.
- D. NEW STREET – West side from North Main Street to Wilson Pond Road.
- E. HIGHLAND TERRACE – On the outside of the circumference of the circle only.

F. NORTH MAIN STREET – On the south side from the intersection of the Old Lewiston Road westerly a distance of fifteen hundred (1500) feet to the eastern side of the main parking lot of the textile mill, easterly a distance of fifty (50) feet beginning at the intersection of North Main Street and Highland Terrace, easterly a distance of one hundred and thirty eight (138) feet commencing three hundred and sixty (360) feet from the intersection of North Main Street and Highland Terrace and on the north side from the intersection of North Main Street and New Street easterly for distance of five hundred and ninety five (595) feet.

G. BEACH ROAD – West side from the intersection of Main Street to the end of the public way. These areas shall be posted by conspicuous signs at all times.

H. MAIN STREET – On the east side of Main Street, beginning at the railroad right-of-way, northerly a distance of two hundred ten (210) feet to the parsonage driveway, between the hours of 8:00 P.M. and 6:00 A.M. On the west side of Main Street, beginning at Flanders Drive, southerly a distance of one hundred seventy five (175) feet to the intersection of Maple Street, between the hours of 10:00 P.M. and 6:00 A.M.

I. COBBOSSEE ROAD – Beginning two hundred eighty (280) feet east of Tamarack Drive, easterly a distance of three thousand eight hundred twenty (3,820) feet; no parking both sides of the street, to Pease Hill Road; no parking on the pavement, both sides of street.

J. STATE ROUTE #135 – Beginning at the intersection of Sanborn Road, easterly one thousand three hundred fifty (1,350) feet; no parking both sides of the street.

K. STATE ROUTE #126 – On the east side, beginning thirty on (310 feet south of the intersection of Oak Hill Road, southerly a distance of fifty (50) feet. On the east side, beginning at the bridge that separates Woodbury and Sand Ponds, easterly a distance of five hundred ninety (590) feet to the Litchfield town line.

L. PLEASANT STREET – On the south side, beginning at a point eighty nine (89) feet from the intersection of Main Street, easterly a distance of one hundred thirty (130) feet.

M. LAUNCH DRIVE – On the north and south sides of the roadway beginning at the intersection of State Route #135, extending easterly a distance of two thousand four hundred twenty (2,420) feet to the designated parking areas.

N. STATE ROUTE 202 – On the south side, beginning at the intersection of Annabessacook Rd, easterly a distance of one hundred (100) feet.

\*Cross Reference: Parks Ordinance. Section 6. Vehicles and Parking.

## **Section 5.       Emergency Vehicles**

The provisions of the Ordinance shall apply to authorized emergency vehicles as defined by Title 29-A M.R.S.A., sections 946 and 1368, except as follows:

A. A driver, when operating any such vehicle in an emergency , except when otherwise directed by a Police Officer, may park or stand such emergency vehicle notwithstanding the provisions of the Ordinance.

B. The foregoing exception, however, shall not protect the driver of such vehicle from the consequences of his/her reckless disregard for the safety of others.

#### **Section 6. Town Manager – Emergency Powers**

A. The Town manager is hereby authorized to direct the erection of signs indicating no parking upon any street or way when such parking would interfere with traffic, or create a hazardous condition, on a temporary basis.

B. The Town manager is authorized to mark parking lanes consistent with this Ordinance on any street within the Town of Monmouth.

#### **Section 7. Removal of Vehicles**

Any vehicle stopped, standing or parked in violation of Sections 3 through 6 of this Ordinance, may be removed after a reasonable attempt is made to notify the owner, unless an emergency exists, by the Chief of Police or designee, to a garage or storage place and impounded therein. The Police Officer may use such force as may be necessary to enter the vehicle and cause the same to be placed in a condition to be moved and may employ any reputable and properly bonded/insured person engaged in the business of towing and storage of vehicles. Neither the Town of Monmouth nor the Officer shall be liable for any damage which may be caused to any vehicle ordered moved under the provisions of the Ordinance unless such damage is caused by gross negligence of the officer or the Town of Monmouth.

After removing the vehicle from the street, the Chief of Police or designee shall make every reasonable effort to notify the owner of any such vehicle, as promptly as possible. A written notice by certified mail, telling that such vehicle has been impounded shall be sent by the Chief of Police to the registered owner's last known address, as may be shown by the record of the Secretary of State. If the owner is unknown, the Chief of Police shall cause notice of such impoundment to be published in any newspaper printed in Kennebec and Androscoggin Counties, which gives the registration number, if known, the vehicle identification number, and the make, type, and year of said vehicle including the place of impoundment.

#### **Section 8. Liabilities of the Vehicle Owner**

Before the owner of a vehicle or his representative may remove the vehicle from the possession of the person towing it or storing it, they shall:

A. Pay any penalty due to the Town Office

B. Furnish satisfactory evidence of identity and ownership of the vehicle to the Chief of Police or designee, and to the person impounding the vehicle.



C. Pay to the person impounding the vehicle all reasonable charges for the towing and storage of the vehicle.

D. Sign a receipt for the vehicle.

E. The performance of these conditions shall not be admissible in a court of law as evidence against any person to prove a violation of this Ordinance.

### **Section 9. Penalties, Fines**

Any violation of the provisions of this Ordinance shall be cause for a fine in accordance with the following:

Sections 3A through 3J and 3K: \$15.00 for each offense

Section 3J: \$25.00 for each offense

Section 3L: As mandated by Title 30-A, M.R.S.A., Section 3009.

Sections 4A through L, 5 and 6: \$15.00 for each offense

Section 4M: \$50.00 each offense

Section 4N: \$25.00 each offense

### **Section 10. Administration**

The Chief of Police of the Town of Monmouth shall be responsible for the administration and the enforcement of this Ordinance and shall maintain written records of issuance of parking tickets and fines collected. All fines for violations of this Ordinance shall be paid at the Town Offices during normal business hours.

### **Section 11. Validity , Severability**

Should any section or part thereof, of this Ordinance be held invalid by any court of competent jurisdiction, it shall not affect the validity of the entire Ordinance or any part thereof, other than the part declared invalid.

***Town of Monmouth***  
***Parks Ordinance***  
*Adopted October 25, 2006*

SECTION 1.

This Ordinance shall be known and cited as the “Town of Monmouth Parks Ordinance.”

SECTION 2.

Definitions: For any purpose of this Ordinance, the following terms have the meaning herein given. The word “shall” is mandatory not discretionary.

1. “*Town*” is the Town of Monmouth
2. “*Director*” is the Monmouth Parks and Recreation Director or such deputy as shall have been duly appointed including, but not limited to, lifeguards and instructional personnel.
3. “*Park*” is any area in the Town owned and used by the Town and designated for recreation.
4. “*Person*” is any person or organization of any kind.
5. “*Municipal Officers*” means the Board of Selectmen.
6. “*Commission*” means the five (5) citizens appointed by the Municipal Officers to serve on the Parks and Recreation Committee.
7. “*Vehicle*” means any conveyance including, but not limited to, an automobile, truck, motorcycle, trail bike, trailer, wagon, snowmobile, bicycle, or watercraft.

Section 3. General Park Operating Policies.

(a). *Hours:* Except for emergencies a park shall be open to the public throughout the year during designated hours as recommended by the Commission and adopted by the Municipal Officers. The opening and closing hours shall be posted at the facility entrance.

(b). *Authority to act:* The Commission shall oversee all park and recreation areas and shall adopt, establish, and as necessary revise safety rules and regulations. These Rules and Regulations shall be posted in a conspicuous place in each park.

Section 4. Buildings and Other Property.

(a). *Damage to property:* A person shall not damage, move, or remove any building, structure, appurtenance, or personal property whatsoever.

(b). *Erection of structures:* A person shall not construct or erect a building or structure of any kind.

(c). *Damage to plants:* A person shall not climb, damage, remove, or pick flowers or seeds of a tree or other plant. A person shall not attach a rope, wire or other contrivance to any tree or plant. A person shall not dig in or otherwise disturb grass areas, or in any other way injure or impair the natural beauty or usefulness of any area.

(d). *Improper use:* A person shall not climb, walk, stand, or sit on a monument, vase, fountain, railing, fence, or any other structure not designed for that purpose.

#### Section 5. Sanitation.

(a). *Pollution of waters:* A person shall not throw, discharge, or otherwise place or cause to be placed in any body of water any substance which may result in the pollution of said waters.

(b). *Refuse and trash:* A person shall not leave any garbage or other trash except in the proper receptacles. Where such receptacles are full, or otherwise unavailable, persons will remove their refuse from the park. Violation of this subsection shall be deemed littering.

(c). *Animals and removal of animal waste:* Nothing in this section shall be construed as limiting the use of seeing-eye and service dogs. No animal shall be brought to any designated swimming area, beach or playground area from the period to time inclusive of Memorial Day to Labor Day. Any dogs in those areas where animals are permitted shall be, at all times, under their owners' control as provided in Maine Revised Statutes Annotated. All persons shall be responsible for the removal of any waste created by any animal brought by them into any park.

#### Section 6. Vehicles and Parking.

(a). *Operation of vehicles:* A person shall not operate any vehicle in a park on any area except a public way, park road, or parking area, or in those areas specifically designated by the Director. All State of Maine Motor Vehicle Laws, Title 29A shall apply to all parks.

(b). *Parking:* A person shall park a vehicle only in a designated parking area and in accordance with any posted directions and signs.

\* Cross Reference: Parking Ordinances. Section 3. Unlawful Parking

#### Section 7. General Conduct and Usage.

(a). *Bathing and swimming:* A person shall not swim, bathe, or wade in any body of water except in those areas which are specifically designated for swimming or bathing purposes, and in compliance with regulations adopted by the Commission.

(b). *Hunting and firearms:* A person shall not hunt, trap, or disturb wildlife. A person shall not possess or discharge a firearm, blank gun, air rifle, spring gun, bow and arrow,

sling, or any other type of weapon which is potentially dangerous to human beings or to wildlife.

(c). *Fires:* A person shall not build a fire except in those areas designated and in accordance with regulations adopted by the Commission.

(d). *Intoxication and possession:* Intoxication or possession of intoxicating beverages or drugs is not permitted in any park.

(e). *Smoking:* Smoking is not permitted in any park.

(f). *Signs:* A person shall obey all traffic signs and all signs posted for the protection of property, or the promotion of the health, safety, or general welfare of the occupants of a park or the residents of the town.

(g). *Offensive behavior:* A person shall not engage in any indecent language or loud noise which would be offensive to any reasonable person, or engage in any disorderly conduct or behavior tending to breach of the public peace. If any person complains of such behavior to the Director or Law Enforcement Officer, the Director or Officer shall warn the individual against whom the complaint is made. If, after the warning, the offensive behavior persists, it shall be deemed a violation.

(h). *Merchandising, advertising and signs:* Except for concessions authorized by the Commission, a person shall not display, offer to sell, or sell anything. As used in this section, "concessions" shall include not only food but also the right to display, offer to sell, or sell goods and services.

(i). *Closed areas:* Any section or part of any park may be declared closed to the public by the Director at any time for any interval of time, either temporarily or at regular stated intervals.

(j). *Entry prohibited:* Except with the written permission of the Director, a person shall not enter, pass through, or remain in a park after closing time, or in the closed area of any park. If an admission fee is charged, a person shall not enter a park without first paying the fee. This section shall not apply to a person who is in a park for the express purpose of launching or loading a watercraft. A person may remain in the park only for a reasonable time period to accomplish that specific task.

(k). *Public docks and landings.* No person shall obstruct by any means whatsoever the free use of piers, docks, and town landings. The town landings shall be used only for loading and unloading. Watercraft shall not remain moored to landing or dock for a period longer than thirty (30) minutes.

## Section 8. Enforcement.

- (a). *Ejection:* The Director or any Law Enforcement Officer shall have the authority to eject or cause to be removed from a park any person acting in violation of this Ordinance.
- (b). *Violation:* Violation of this Ordinance shall constitute a civil violation and shall be prosecuted as provided for in the Maine Revised Statutes Annotated. Primary responsibility for enforcement of this Ordinance shall lie within the powers of the Monmouth Police Department. Whoever violates any of the provisions of this Ordinance shall be fined not less than fifty dollars (\$50.00) or more than one hundred-fifty dollars (\$150.00) for each offense. Any fine shall be recovered for use by the Town.

## Section 9. Repeal, Validity, Severability and Conflict with Other Ordinances.

- (a). *Repeal:* All previous Park and Beach Ordinances are hereby repealed.
- (b). *Validity and severability:* Should any section or provision of this Ordinance be declared by any Court to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
- (c). *Conflict with other ordinances:* Whenever the requirements of this Ordinance are inconsistent with the requirements of any other Ordinance, Code or Statute, the more restrictive requirements shall apply.

# **TOWN OF MONMOUTH PROPERTY TAX ASSISTANCE ORDINANCE**

## **Section 1. Purpose**

The purpose of this Ordinance is to establish a program to provide property tax assistance to persons 65 years of age and over who reside in the Town of Monmouth. Under this program, the Town of Monmouth will provide supplemental cash refund payments to those individuals who qualify as Monmouth resident beneficiaries of the State of Maine Residents Property Tax Program pursuant to Chapter 907 of Title 36 of the Maine Revised Statutes and meet the criteria established by this Ordinance.

## **Section 2. Definitions**

**Homestead:** A homestead is a dwelling owned, rented or held in a trust, life tenancy or similar legal instrument for the benefit of the person seeking tax assistance under this Ordinance. The dwelling must be occupied by that person and that person's dependents as a home.

**Qualifying applicant:** A qualifying applicant is a person who is determined by the Town Manager, after review of a complete application under Section 4 of this Ordinance, to be eligible for a refund payment under the terms of this Ordinance.

## **Section 3. Criteria for Participation**

In order to participate in the Property Tax Assistance Program, an applicant shall demonstrate all of the following:

- a. The applicant shall be 65 years of age or more at the time of application.
- b. The applicant shall have a homestead in the Town of Monmouth at the time of the application and for the entire year prior to the date of application.
- c. The applicant has received a refund under the provisions of Chapter 907 of 36 M.R.S.A.
- d. The applicant has been a resident of the Town of Monmouth for at least ten years immediately proceeding the date of application for participation in the Program.

## **Section 4. Application and Payment Procedures**

Persons seeking to participate in the Property Tax Assistance Program shall submit a written request to the Town Manager no later than October 31st. Applications are required every year to participate in this program. The Town Manager shall provide an application form for the program, which shall include, at a minimum, the applicant's name, homestead address and contact information. Attached to all applications shall be proof and dollar amount (copy of check) of State Refund under Chapter 907 of Title 36 (State Circuit Breaker Program). The Town Manager shall review and determine if the application is complete and accurate and if the applicant is otherwise eligible to participate in the Program. The Town Manager shall notify an applicant if an application is determined to be incomplete. The Town Manager's decision on eligibility to participate in the Program may be appealed to the Board of Selectmen.

## **Section 5. Determination of eligibility and amount of eligibility**

If the Town Manager determines that the applicant is eligible to participate in the Program, he shall determine the total amount of such eligibility. Eligibility shall be the lesser of the following amounts:

- a. 20% of the amount of the refund awarded by the State under Chapter 907, Title 36 M.R.S.A. (Maine Circuit Breaker Program) or;
- b. Available monies in the Town Circuit Breaker fund or;
- c. \$320.00.

The Town Manager shall report to the Board of Selectmen at their first meeting after December 31<sup>st</sup> each year the projected payments and number of eligible applicants requesting assistance for the program fund.

## **Section 6. Program Fund - Limitations upon payments**

Payments under this Ordinance shall be conditioned upon the existence of sufficient monies in the Program Fund the year in which participation is sought. If there are not sufficient monies in the Program Fund to pay all qualifying applicants under this Ordinance, payments shall be limited to the amounts available in the Fund. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request will not carry over to the next year.



## **Section 7. Creation of the Program Fund**

The Program Fund from which payments shall be made under the terms of this Ordinance shall be created as follows:

As funds are available, the Board of Selectmen shall request from the annual town meeting to appropriate monies from the general fund or other sources to support this program. Any surplus monies available after all payments have been made shall be deposited into the town's undesignated fund balance on June 30th of each year.

## **Section 8. Timing of Payments**

A person who qualifies for payment under this Program shall be mailed a check for the full amount (or pro-rated amount if inadequate funds are available) no later than December 31st for the year in which participation is sought

## **Section 9. Limitations upon payments**

Only one qualifying applicant per household shall be entitled to payment under this Program each year. The right to file an application under this Ordinance is personal to the applicant and does not survive the applicant's death, but the right may be exercised on behalf of an applicant by the applicant's legal guardian or attorney-in-fact. If an applicant dies after having filed a timely complete application that results in a determination of qualification, the amount determined by the Town Manager shall be disbursed to another member of the household as determined by the Town Assessor or the Town Manager. If the applicant was the only member of a household, then no payment shall be made under this Ordinance.

Filed with the Office of the Town Clerk: \_\_\_\_\_

Amended 6/12/2012

# TOWN OF MONMOUTH

## Ordinance for the Recall of Elected Municipal Officials

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### SECTION 1. Establishment

Under 30-A M.R.S.A § 2602(6) amended November 8, 2011, a municipality may enact an ordinance for the recall and removal of elected municipal officials with the exception of school board members as noted in 30-A M.R.S.A. § 2602.

### SECTION 2. Applicability

Any elected official including but not limited to; Selectmen, Assessor, Monmouth Sanitary District Trustee, Cumston Hall Trustee and Cumston Library Trustee of the Town of Monmouth may be recalled and removed from office as provided in this ordinance.

### SECTION 3. Petitions for Recall

- a. The petition for recall must contain only signatures of the registered voters of the Town of Monmouth, equal to 10% of the number of votes cast in the last gubernatorial election but in all cases no less than 10.
- b. The petition shall be addressed to those members of the Board of Selectmen having no interest in the subject matter of the petition.
- c. The petition shall state the name and office of the person whose removal is sought, and a specific statement of the reason or reasons for removal.
- d. If recall of more than one official is being sought, there shall be a separate petition for each official whose removal is being sought.
- e. Each page of the petition shall provide a space for the voter's signature, address, and printed name.
- f. All petition pages shall be filed as one document

### SECTION 4. Clerk's Certification

Within 10 days of receipt of the petition, the Town Clerk shall certify the signatures contained on the petition and shall determine if the petition meets all of the qualification as set forth in section 3 of this ordinance. Should the petition be found insufficient, the petition will be filed in the Town Clerk's office and the voter who filed the petition will be notified by the Town Clerk.

### SECTION 5. Calling the Recall Election

- a. If the petition is certified by the Town Clerk to be sufficient, he or she will submit the same with his or her certification to the Board of Selectmen at their next regular meeting and shall notify the official or officials whose removal is being sought of such action.
- b. The Board of Selectmen, upon receipt of the certified petition, shall within 10 days time of receipt, order and election by secret ballot, pursuant to 30-M.R.S.A. § 2528, to be held not less than 30 nor more than 60 days thereafter, provided that a regular municipal election will not be held within 90 days of receipt of the certified petition, in this case the Board of Selectmen may at their discretion provide for the holding of the recall election on the date of the regular municipal election.
- c. In the event that the Board of Selectmen fail or refuse to order and election, the Town Clerk shall call the election to be held not less than 30 days nor more than 60 days following the Board of Selectmen's failure or refusal to order the required election.
- d. The Board of Selectmen shall hold a public hearing on the subject of the article at least 10 days before the day for voting on the article. 30-A M.R.S.A. 2528 (5)

#### SECTION 6. Ballots for Recall Election

- a. Unless the official or officials whose removal is being sought have resigned within 10 days of receipt of the petition by the Board of Selectmen, the ballots shall be printed and shall read "SHALL \_\_\_\_\_ BE RECALLED?" with the name of the official whose recall is being sought inserted in the blank space.
- b. An affirmative vote for removal shall require: (i) a simple majority of the votes cast, and (ii) that at least 10 % of the registered voters of the Town of Monmouth have voted on the vote for removal.

#### SECTION 7. Result of Election

In the event of an affirmative vote for removal, such vote shall take effect as of the recording of the vote tabulation into the records.

#### SECTION 8. Vacancies to be filled

Any vacancy resulting from removal from office under this ordinance shall be filled in accordance with Maine law.

TOWN OF MONMOUTH  
SHORELAND ZONING ORDINANCE

Effective Date: December 14, 1991

Amended: May 29, 1992

Amended: May 20, 1995

Amended: June 20, 2001

Amended: June 12, 2007

Amended June 09, 2009

Amended November 8, 2011

Amended June 14, 2016

Amended June 13, 2017

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## Chapter 1000: GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES

**PREFACE:** The *Mandatory Shoreland Zoning Act*, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. This document, adopted by the Board on February 14, 1990 and amended July 14, 1992, August 7, 1994, February 6, 1999, February 13, 2000, May 1, 2006 and January 26, 2015 contains those guidelines for municipal shoreland ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines.

Municipalities need not adopt this guideline ordinance word for word. In fact, the Department of Environmental Protection (Department) encourages municipalities to consider local planning documents and other special local considerations, and to modify this ordinance into one that meets the needs of the particular community. Municipalities may wish to adopt more stringent ordinances, or ordinances which are completely different from the guidelines, provided that such ordinances are equally or more effective in achieving the purposes of the Act. In addition, coastal communities must address the coastal management policies cited in 38 M.R.S.A. section 1801.

When a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the Commissioner of the Department for review and approval. No amendment to an ordinance which affects the shoreland zone is valid without the approval of the Commissioner.

Neither this "Preface" nor the "Notes" contained in this model ordinance are official parts of the ordinance and should not be incorporated into a municipality's locally adopted ordinance. The Preface and Notes are provided for explanatory purpose only.

Municipalities must be aware that in addition to the requirements of the *Mandatory Shoreland Zoning Act*, the requirements of the *Comprehensive Planning and Land Use Regulation Act* (30-A M.R.S.A. Chapter 1878, sections 4312-4349) will be an integral part of a municipality's overall strategy for managing future development. For example, parts of a municipality's shoreland area may be designated as an area for growth while others will be designated as rural or slow growth areas.

In many situations, the shoreland zoning ordinance will be an effective tool for implementing the goals and policies of a municipality's comprehensive plan. A municipality may choose to integrate the shoreland zoning requirements into a town-wide zoning ordinance or choose to have a separate shoreland zoning ordinance. Regardless, the shoreland zoning provisions should form an integrated approach to managing growth as well as fulfilling the requirements of the *Mandatory Shoreland Zoning Act*.

For more information on the Growth Management Program, please contact your regional council or the Municipal Planning Assistance Program at the Department of Agriculture, Conservation and Forestry, 22 State House Station, Augusta, Maine 04333.

For more information on the shoreland zoning law, please contact the Department of Environmental Protection's Shoreland Zoning Unit, 17 State House Station, Augusta, Maine 04333.

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## **TOWN OF MONMOUTH SHORELAND ZONING ORDINANCE**

1. **Purposes.** The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.
2. **Authority.** This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).
3. **Applicability.** This Ordinance applies to all land areas within 250 feet, horizontal distance, of the
  - normal high-water line of any great pond or river, or
  - upland edge of a freshwater wetland

and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

### **4. Effective Date**

**A. Effective Date of Ordinance and Ordinance Amendments.** This Ordinance, which was adopted by the municipal legislative body on June 14, 2016 shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

**B. Sections 15(O) and 15(O-1).** Section 15(O) is repealed on the statutory date established under 38 M.R.S.A. section 438-A(5), at which time Section 15(O-1) shall become effective. Until such time as Section 15(O) is repealed, Section 15(O-1) is not in effect.

5. **Availability.** A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.
6. **Severability.** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

7. **Conflicts with Other Ordinances.** Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.
8. **Amendments.** This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.
9. **Districts and Zoning Map**
- A. **Official Shoreland Zoning Map.** The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Monmouth Shoreland Zoning Map which is made a part of this Ordinance:
- (1) Resource Protection
  - (2) Stream Protection
  - (3) Rural
  - (4) Shoreland Residential
  - (5) Limited Residential
  - (6) General Development
- B. **Scale of Map.** The Monmouth Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.
- C. **Certification of Monmouth Shoreland Zoning Map.** The Monmouth Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the Monmouth Town Office.
- D. **Changes to the Monmouth Shoreland Zoning Map.** If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Monmouth Shoreland Zoning Map, such changes shall be made on the Monmouth Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.
10. **Interpretation of District Boundaries.** Unless otherwise set forth on the Monmouth Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.
11. **Land Use Requirements.** Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

## 12. Non-conformance.

- A. Purpose.** It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

### **B. General**

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- (2) **Repair and Maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

### **C. Non-conforming Structures**

- (1) **Expansions.** All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.

(a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

(b) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1).

(i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

(c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or

altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(1)(a), above.

(i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

(d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

(2) **Foundations.** Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below.

(3) **Relocation.** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

**(4) Reconstruction or Replacement.** Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(3) above, the physical condition and type of foundation present, if any.

(5) **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

#### **D. Non-conforming Uses**

- (1) **Expansions.** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1)(a) above.
- (2) **Resumption Prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- (3) **Change of Use.** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

#### **E. Non-conforming Lots**

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that



the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- (3) Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

### 13. Establishment of Districts

- A. Resource Protection District.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the General Development District need not be included within the Resource Protection District.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of \_\_\_\_\_. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
- (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain as designated on the Federal Emergency Management



Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

- (3) Areas of two or more contiguous acres with sustained slopes of 20% or greater within the 250' shoreland zone.
- (4) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

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NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

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- (5) Land areas along rivers subject to severe bank erosion, undercutting, or stream bed movement.

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**NOTE:** Municipalities may also include the following other areas which have been recommended for protection in the comprehensive plan of the municipality, or as otherwise endorsed for protection by the municipal legislative body, such as:

- A. Other important wildlife habitat;
- B. Natural sites of significant scenic or esthetic value;
- C. Areas designated by federal, state or municipal governments as natural areas of significance to be protected from development; and
- D. Other significant areas which should be included in this district to fulfill the purposes of this Ordinance, such as, but not limited to, existing public access areas and certain significant archaeological and historic sites deserving of long-term protection as determined by the municipality after consultation with the Maine Historic Preservation Commission.
- E. Areas within 250 feet, horizontal distance, of the upland edge of freshwater and/or coastal wetlands, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W). These areas are generally depicted on a Geographic Information System (GIS) data layer.

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**B. Limited Residential District.** The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District or the General Development Districts.

**C. Rural District.** The Rural District includes land in the shoreland zone within two hundred fifty (250) feet of freshwater wetlands, as required under State law. The type of land covered is

generally underdeveloped-forests, reverting fields or farmland. Structural development, if it exists, is very low density in most locations.

**D. Shoreland Residential District.** The Shoreland Residential District includes those areas already developed with residences and those areas suitable for residential development. It includes areas other than those in the Resource Protection District or Stream Protection District, and areas which are used less intensively than those in the Limited Recreational and the General Development District.

**E. General Development District.** The General Development District includes the following types of existing, intensively developed areas:

- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
  - (a) Areas devoted to manufacturing, fabricating or other industrial activities;
  - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
  - (c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
- (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

**F. Stream Protection District.** The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

**14. Table of Land Uses.** All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Key to Table 1:

- Yes - Allowed (no permit required but the use must comply with all applicable land use standards)
- No - Prohibited
- PB - Allowed with permit issued by the Planning Board.
- CEO - Allowed with permit issued by the Code Enforcement Officer
- LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

- |                            |                          |
|----------------------------|--------------------------|
| RP - Resource Protection   | GD - General Development |
| LR - Limited Residential   | R - Rural                |
| SR - Shoreland Residential | SP - Stream Protection   |

The following notes are applicable to the Land Uses Table on the following page:

**TABLE 1. LAND USES IN THE SHORELAND ZONE**

<u>LAND USES</u>	<u>DISTRICT</u>					
	<u>SP</u>	<u>RP</u>	<u>R</u>	<u>SR</u>	<u>LR</u>	<u>GD</u>
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes	yes
3. Forest management activities except for timber harvesting & land management roads	yes	yes			yes	yes
4. Timber harvesting	yes	CEO <sup>13</sup>	yes	yes	yes	yes
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO <sup>1</sup>	yes	yes	yes	yes
6. Fire prevention activities	yes	yes	yes	yes	yes	yes
7. Wildlife management practices	yes	yes	yes	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes	yes	yes	yes
9. Mineral exploration	no	yes <sup>2</sup>	CEO	CEO	yes <sup>2</sup>	yes <sup>2</sup>
10. Mineral extraction including sand and gravel extraction	no	PB <sup>3</sup>	PB	PB	PB	PB
11. Surveying and resource analysis	yes	yes	yes	yes	yes	yes
12. Emergency operations	yes	yes	yes	yes	yes	yes
13. Agriculture	yes	PB	yes	yes	yes	yes
14. Aquaculture	PB	PB	yes	PB	PB	yes
15. Principal structures and uses						
A. One and two family residential, including driveways	PB <sup>4</sup>	PB <sup>9</sup>	CEO	CEO	CEO	CEO
B. Multi-unit residential	no	no	PB	PB	PB	PB
C. Commercial	no	no <sup>10</sup>	no	no	no <sup>10</sup>	PB
D. Industrial	no	no	no	no	no	PB
E. Governmental and institutional	no	no	PB	no	PB	PB
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB <sup>4</sup>	PB	CEO	CEO	CEO	CEO
16. Structures accessory to allowed uses	PB <sup>4</sup>	PB	CEO	CEO	CEO	yes
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland						
a. Temporary	CEO <sup>11</sup>	CEO <sup>11</sup>	CEO	CEO	CEO <sup>11</sup>	CEO <sup>11</sup>
b. Permanent	PB	PB	PB	PB	PB	PB
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI	LPI
19. Home occupations	PB	PB	yes	yes	PB	yes
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI
21. Essential services	PB <sup>6</sup>	PB <sup>6</sup>	PB	PB	PB	PB
A. Roadside distribution lines (34.5kV and lower)	CEO <sup>6</sup>	CEO <sup>6</sup>	PB	PB	yes <sup>12</sup>	yes <sup>12</sup>
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	CEO	CEO
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB	PB
D. Other essential services	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB <sup>6</sup>	PB	PB
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes	yes
23. Public and private recreational areas involving minimal structural development	PB	PB	CEO	no	PB	CEO
24. Individual, private campsites	CEO	CEO	CEO	CEO	CEO	CEO
25. Campgrounds	no	no <sup>7</sup>	PB	No	PB	PB
26. Road construction	PB	no <sup>8</sup>	CEO	PB	PB	PB
27. Land management roads	yes	PB	PB	PB	yes	Yes
28. Parking facilities	no	no <sup>7</sup>	CEO	PB	PB	PB
29. Marinas	PB	no	no	no	PB	PB
30. Filling and earth moving of <25 cubic yards	CEO	CEO	yes	yes	yes	Yes
31. Filling and earth moving of >25 cubic yards	PB	PB	CEO	CEO	CEO	CEO
32. Signs	yes	yes	yes	yes	yes	Yes
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB

<sup>1</sup>In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

<sup>2</sup>Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

<sup>3</sup>In RP not allowed in areas so designated because of wildlife value.

<sup>4</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>6</sup>See further restrictions in Section 15( L)(2).

<sup>7</sup>Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

<sup>8</sup>Except as provided in Section 15(H)(4).

<sup>9</sup>Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.

<sup>10</sup> Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>11</sup> Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

<sup>12</sup> Permit not required but must file a written "notice of intent to construct" with CEO.

<sup>13</sup> Option to Towns only.

NOTE: Item 17, in its entirety, should be deleted from Table 1 if a municipality elects not to regulate "piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland".

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

**15. Land Use Standards.** All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

**A. Minimum Lot Standards**

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) (i) Residential per dwelling unit	40,000	200
(ii) Residential on sewer and water	30,000	150
(b) Governmental, Institutional, Commercial or Industrial per principal structure	60,000	300
(c) Public and Private Recreational Facilities	40,000	200
(d) Rural	2 acres	300
(2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.		
(3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.		
(4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.		
(5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.		

## B. Principal and Accessory Structures

- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development I District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (b) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

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NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

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- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
  - (a) **Cupolas.** For the purpose of determining the height of a structure, a Municipal Ordinance adopted pursuant to this article may exempt a cupola, dome, widow's walk or similar feature added to a legally existing conforming cupola if: 1. The legally existing conforming structure is not located in a Resource Protection District or a stream protection district as defined in guidelines adopted by the boards, and 2. the cupola, dome, widow's walk, or other similar feature:
    - Does not extend beyond the exterior walls of the existing structure;
    - Has a floor area of 53 square feet or less; and
    - Does not increase the height of the existing structure, as determined under Section 436-A, Sub-section 7-A, by more than 7 feet.

For purposes of this Sub-section, "cupola, dome, widow's walk, or other similar feature" means a nonhabitable building feature mounted on a building roof for observation purposes.

- (3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- (4) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the General Development District adjacent to rivers that do not flow to great ponds classified GPA, where lot coverage shall not exceed seventy (70) percent.
- (5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
  - (a) The site has been previously altered and an effective vegetated buffer does not exist;
  - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (b) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (c) The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
    - (ii)Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;

- (iii) Only native species may be used to establish the buffer area;
- (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
- (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;

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NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, or tributary stream, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

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- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
- (7) Setback from private roads in Shoreland Zone. In order to protect the water body by insuring that water body, wetland, and tributary stream setbacks are met to the greatest practical extent, the Planning Board in approving new construction, or an expansion, reconstruction or relocation of existing buildings where lot size, topography, or other issues on the lot limit construction options, may reduce the setback for primary and accessory structures from the private way to:
  - (a) twenty five (25) feet to the edge of the right of way (property line);
  - (b) forty (40) feet from the centerline of the right of way; or
  - (c) in situations whether either a or b does not provide that water body, wetland and tributary stream setback is met to the greatest practical extent, and where pre-existing and properly permitted buildings on adjacent lots do not meet the setback, a distance equal to the larger of the setbacks of the two adjacent buildings must be met.

**C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland, and Shoreline Stabilization**

- (1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
- (2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (3) The location shall not interfere with existing developed or natural beach areas.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.



- (5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- (6) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

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**NOTE:** A structure constructed on a float or floats is prohibited unless it is designed to function as, and is registered with the Maine Department of Inland Fisheries and Wildlife as a watercraft.

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- (7) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the *Natural Resources Protection Act*.
- (8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (9) Except in the General Development Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
- (10) Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
  - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
  - (b) Revegetation must occur in accordance with Section 15(S).

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**NOTE:** A permit pursuant to the *Natural Resource Protection Act* is required from the Department of Environmental Protection for Shoreline Stabilization activities.

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**NOTE:** New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

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**D. Campgrounds.** Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- (1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**E. Individual Private Campsites.** Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- (1) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- (2) When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
- (3) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (4) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (5) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (6) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- (7) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

**F. Commercial and Industrial Uses.** The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops

- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

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NOTE: 22 M.R.S.A. section 1471-U requires municipal ordinances that apply to pesticide storage, distribution or use be filed with the Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333. If a municipality's ordinance is more inclusive or restrictive than these Guidelines, as it pertains to pesticides, a copy of the ordinance must be filed with the Board of Pesticides Control.

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- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

#### **G. Parking Areas**

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development I District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
  - (a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
  - (b) Internal travel aisles: Approximately twenty (20) feet wide.

**H. Roads and Driveways.** The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- (1) Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.
- (3) New permanent roads are not allowed within the shoreland zone along Significant River Segments except:
  - (a) To provide access to structures or facilities within the zone; or
  - (b) When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (4) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (5) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15(Q).

- (6) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (7) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (8) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:
  - (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21 +	40

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
  - (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
  - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- (9) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**I. Signs.** The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential and Limited Commercial Districts:

- (1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the Limited Commercial District, however, such signs shall not exceed sixteen

- (16) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- (2) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
  - (3) Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
  - (4) Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
  - (5) Signs relating to public safety shall be allowed without restriction.
  - (6) No sign shall extend higher than twenty (20) feet above the ground.
  - (7) Signs may be illuminated only by shielded, non-flashing lights.

#### **J. Storm Water Runoff**

- (1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- (2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.
- (3) Phosphorus Export: In order to reduce the amount of phosphorus export from any development subject to this ordinance, the owner and/or contractor shall follow Best Management Practices for Construction and shall incorporate into the Erosion and Sedimentation Plan measures to:
  - (a) minimize unnecessary bare areas and lawn,
  - (b) spread collected water over a wide enough area so that erosion of the receiving area does not result, and
  - (c) create vegetated buffers between the developed area and the bank of any waterbody if sufficient natural vegetation does not exist to accomplish the following:
    - (i) trap sediments, excess nutrients and other pollutants,
    - (ii) prevent erosion, and
    - (iii) stabilize sloped areas and the shoreline or stream bank.

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NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams)

and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

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#### **K. Septic Waste Disposal**

- (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

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NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

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#### **L. Essential Services**

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

**M. Mineral Exploration and Extraction.** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(4) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be



permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.

- (3) Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.
- (4) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

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NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

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- (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
  - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (5) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

## **N. Agriculture**

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

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NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

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- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

## **O. Timber Harvesting**

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### **NOTE RELATING TO TIMBER HARVESTING STANDARDS:**

Title 38 M.R.S.A. Section 438-A provides that, notwithstanding other provisions of the *Mandatory Shoreland Zoning Act*, the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with Section 438-B and rules adopted by the Maine Forest Bureau pursuant to Title 12, Section 8867-B. Section 438-B establishes three options from which each municipality may choose as the State implements a set of statewide timber harvesting standards in shoreland areas. The Town of Monmouth adopts the option that provides timber harvesting standards that are identical to the statewide standards pursuant to 12 MRSA Section 438-B (3). This allows Monmouth to retain some local control over the administration and enforcement of timber harvesting in the shoreland zone, while receiving assistance and expertise from the staff of the Bureau of Forestry. Monmouth participates in the joint and enforcement of these standards with the Bureau of Forestry. Monmouth has entered into an agreement with the director (of the Bureau of Forestry) that delineates the administrative and enforcement duties of each. In order to continue to receive administrative and enforcement assistance from the Bureau of Forestry, Monmouth shall amend its shoreland zoning ordinance as necessary to maintain identical provisions with the statewide standards. Notwithstanding any provisions in this ordinance to the contrary, rules adopted by the Bureau of Forestry pursuant to Title 12 MRSA Section 8867-B will apply to the regulation of timber harvesting.

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The standards and rules in affect are set out in Appendix 1, which is attached hereto and incorporated herein by reference. It is the intent of this Ordinance that any amendments to the statewide standards set forth in 12 MRSA Section 438-B (3) and/or any amended rules promulgated by the Bureau of Forestry shall supercede and replace the standards and rules in Appendix 1 and shall become a part of this Ordinance.

## **P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting**

- (1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

- (2) Except in areas as described in Section P(1), above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
- (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
  - (b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

<b>Diameter of Tree at 4-1/2 feet Above Ground Level (inches)</b>	<b>Points</b>
2 - < 4 in.	1
4 - < 8 in.	2
8 - < 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points ( $36 - 24 = 12$ ) may be removed from the plot provided that no cleared openings are created.

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The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(P)(2)(b) “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 15(P)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development Districts.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

## **Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal**

- (1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
  - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
  - (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
  - (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
  - (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
  - (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
  - (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
    - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;

- (ii) Stumps from the storm-damaged trees may not be removed;
  - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
  - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
- (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

#### **R. Exemptions to Clearing and Vegetation Removal Requirements**

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;
- (3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with;
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:
  - (a) A coastal wetland; or

- (b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.
- (6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
  - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
  - (b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
  - (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

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**NOTE:** An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program:  
[http://www.maine.gov/dacf/mnap/features/invasive\\_plants/invasives.htm](http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm)

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- (7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

## **S. Revegetation Requirements**

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:
- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.



- (4) Revegetation activities must meet the following requirements for trees and saplings:
  - (a) All trees and saplings removed must be replaced with native noninvasive species;
  - (b) Replacement vegetation must at a minimum consist of saplings;
  - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
  - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
  - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
  - (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
  - (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
  - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
  - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
  - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
  - (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
  - (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
  - (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

## **T. Erosion and Sedimentation Control**

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - (a) Mulching and revegetation of disturbed soil.
  - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - (c) Permanent stabilization structures such as retaining walls or rip-rap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

- U. Soils.** All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

**V. Water Quality.** No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

**W. Archaeological Site.** Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

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NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.

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## **16. Administration**

### **A. Administering Bodies and Agents**

- (1) **Code Enforcement Officer.** A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
- (2) **Board of Appeals.** A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. Section 2691.
- (3) **Planning Board.** A Planning Board shall be created in accordance with the provisions of State law.

**B. Permits Required.** After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
  - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
  - (b) The replacement culvert is not longer than 75 feet; and
  - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

### **C. Permit Application**

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14, the following:
  - (a) A completed and signed application for permit on a form provided by the town;
  - (b) A copy of a deed, purchase and sale agreement, lease or other proof of a legal interest in the subject property;
  - (c) A written description of the project;
  - (d) A scaled plan showing the location of all existing and proposed buildings, wells, septic systems, driveways, parking areas, other impervious areas, lot lines and setbacks of structures from the waterbody, roads and adjacent properties;
  - (e) A copy of any building plans;
  - (f) A copy of subsurface septic disposal system plan or permit; and
  - (g) An erosion control plan.

The applicant shall provide 8 additional copies for any submission made to the Planning Board as indicated in Section 14.

- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) All applications for a permit shall be accompanied at the time of submission by a nonrefundable fee of \$50.00. An additional fee of \$5 per thousand dollars (\$1,000) of construction costs or \$250 whichever is greater shall be paid and placed by the town in an escrow account to cover the costs of administration, review, and inspection. Additional fees may be required if the escrow fund is not sufficient to pay all expenses incurred. Upon request the Town will provide an accounting of the escrow to the applicant. Any unexpended balance shall be returned to the applicant following the completion and final inspection of the premises.
- (4) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (5) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

**D. Procedure for Administering Permits.** Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The applicant shall also be advised whether a site visit is required. The Planning Board or the Code Enforcement Officer may request additional information from the applicant in order to review the project. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days

of receiving a completed application, completing a site visit and receiving additional requested information. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will avoid problems associated with floodplain development and use; and
- (8) Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

**E. Special Exceptions.** In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- (3) All proposed buildings, sewage disposal systems and other improvements are:
  - (a) Located on natural ground slopes of less than 20%; and

- (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.
- (6) The applicant files a soil erosion & sedimentation plan and stormwater plan that satisfies the requirements of sections 15Q & 15J.
- (7) The application and proposed site have been reviewed by the Cobbossee Watershed District and the Board after reviewing the recommendations from Cobbossee Watershed District is satisfied that, if followed, they will adequately protect water quality, productive habitat, and biological ecosystems from destruction or degradation and prevent the creation of hazardous conditions.

**F. Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

**G. Installation of Public Utility Service.** A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

## **H. Appeals**

- (1) **Powers and Duties of the Board of Appeals.** The Board of Appeals shall have the following powers:

(a) **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

(b) **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) **Variance Appeals.** Variances may be granted only under the following conditions:

(a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

(b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

(c) The Board shall not grant a variance unless it finds that:

(i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

a. That the land in question cannot yield a reasonable return unless a variance is granted;

b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

c. That the granting of a variance will not alter the essential character of the locality; and

d. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.



- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

### **(3) Administrative Appeals**

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

### **(4) Appeal Procedure**

#### **(a) Making an Appeal**

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties with notification to abutters and seven (7) printed sites around town.

**(b) Decision by Board of Appeals**

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
  - (ii) When acting in an appellate capacity, the Board of Appeals may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may remand the matter to the Planning Board for further consideration.
  - (iii) When acting in a de novo capacity on an appeal of a Code Enforcement Officer decision, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence and the law, and reaching its own decision.
  - (iv) The person filing the appeal shall have the burden of proof.
  - (v) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
  - (vi) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
- (5) **Appeal to Superior Court.** Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) **Reconsideration.** In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner,

planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

## **I. Enforcement**

(1) **Nuisances.** Any violation of this Ordinance shall be deemed to be a nuisance.

(2) **Code Enforcement Officer**

(a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

(b) The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

(c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

(3) **Legal Actions.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

(4) **Fines.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. Section 4452.

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NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000 (38 M.R.S.A. section 4452).

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## 17. Definitions.

**Accessory structure or use** - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

**Aggrieved party** - an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Agriculture** - the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green-house products. Agriculture does not include forest management and timber harvesting activities.

**Aquaculture** - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Basal Area** - the area of cross-section of a tree stem at 4 -1/2 feet above ground level and inclusive of bark.

**Basement** - any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

**Boat Launching Facility** - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Bureau of Forestry** – State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry

**Campground** - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

**Canopy** – the more or less continuous cover formed by tree crowns in a wooded area.

**Coastal Wetland** – all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service, Coastal wetlands may include portions of coastal sand dunes.

**Commerical use** – the use of lands, buildings, or structures, other than a “home occupation”, defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

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**Cross-sectional area** – the cross-sectional area of a stream or tributary stream channel is determined

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by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

**DBH** – the diameter of a standing tree measured 4.5 feet from ground level.

**Development** – a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Dimensional requirements** - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

**Disability** - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**Disruption of shoreline integrity** - the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

**Driveway** - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**Emergency operations** - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Essential services** - gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure** - an increase in the footprint or height of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

**Expansion of use** - the addition of one or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a particular use.

**Family** - one or more persons occupying a premises and living as a single housekeeping unit.

**Floodway** - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

**Floor area** - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

**Footprint** – the entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

**Forest management activities** - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Forest Stand** - a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

**Forested wetland** - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

**Foundation** - the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

**Freshwater wetland** - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Functionally water-dependent uses** - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland

site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

**Great pond** - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

**Great pond classified GPA** - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

**Ground cover** – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Harvest Area** - the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

**Hazard tree** - a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

**Height of a structure** - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

**Home occupation** - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

**Increase in nonconformity of a structure** - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of



the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Individual private campsite** - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

**Industrial** - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Institutional** – a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

**Land Management Road** - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

**Licensed Forester** - a forester licensed under 32 M.R.S.A. Chapter 76.

**Lot area** - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Marina** - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

**Market value** - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mineral exploration** - hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction** - any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum lot width** - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**Multi-unit residential** - a residential structure containing three (3) or more residential dwelling units.

**Native** – indigenous to the local forests.

**Non-conforming condition** – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Non-conforming lot** - a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

**Non-conforming structure** - a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Non-conforming use** - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Non-native invasive species of vegetation** – species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

**Normal high-water line** - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

**Outlet stream** - any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

**Person** - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Piers, docks, wharves, bridges and other structures and uses** extending over or beyond the normal high-water line or within a wetland.

**Temporary:** Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

**Permanent:** Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Principal structure** - a building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same lot.

**Principal use** - a use other than one which is wholly incidental or accessory to another use on the same lot.

**Public facility** - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Recent floodplain soils** - the following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

**Recreational facility** - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle** - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Replacement system** - a system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

**Residential dwelling unit** - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**Residual basal area** – the average of the basal area of trees remaining on a harvested site.

**Residual Stand** - a stand of trees remaining in the forest following timber harvesting and related activities.

**Riprap** - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**River** - a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

**Road** - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

**Salt marsh** - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by

tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**Salt meadow** - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**Sapling** - a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

**Seedling** - a young tree species that is less than four and one half (4.5) feet in height above ground level.

**Service drop** - any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service
  - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback** - the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

**Shore frontage** - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

**Shoreland zone** - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

**Shoreline** – the normal high-water line, or upland edge of a freshwater or coastal wetland.

**Significant River Segments** - See Appendix B or 38 M.R.S.A. Section 437.

**Skid Road or Skid Trail** - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash** - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

**Storm-damaged tree** – a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as a result of a storm event.

**Stream** - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent, highest resolution version of the national hydrology dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

**Structure** – anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, Section 4201, Subsection 5; geothermal heat exchange wells as defined in Title 32, Section 4700-E, Subsection 3-C; or wells or water wells as defined in Title 32, Section 4700-E, Subsection 8.

**Substantial start** - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

**Subsurface sewage disposal system** – any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. Section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Sustained slope** - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal waters** – all waters affected by tidal action during the highest annual tide.

**Timber harvesting** - the cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

**Timber harvesting and related activities** - timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**Tree** - a woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

**Tributary stream** – means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

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NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

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**Upland edge of a wetland** – the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

**Vegetation** - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

**Velocity zone** – an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

**Volume of a structure** - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**Water body** - any great pond, river or stream.

**Water crossing** - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Wetland** - a freshwater or coastal wetland.

**Windfirm** - the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**Woody Vegetation** - live trees or woody, non-herbaceous shrubs.

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STATUTORY AUTHORITY: 38 M.R.S.A. Section 438-A(5)

EFFECTIVE DATE:

January 13, 1988 (filed as 06-101, Ch. 1)

AMENDED:

March 24, 1990 (filed as 06-096, Ch. 1000)

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July 14, 1992 - Sections 4, 8, 9, 12, 15, 16 & 17

August 7, 1994 - Sections 3, 14 & 16

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 5, 1996

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AMENDED:

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November 22, 2010 – filing 2010-581

May 5, 2012 – filing 2012-134

January 26, 2015 – filing 2015-009



# APPENDIX 1 - Town of Monmouth Shoreland Zoning Ordinance

**O. TIMBER HARVESTING** - Rules Adopted by the Bureau of Forestry, pursuant to 12 MRSA, Section 8867-B.

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**Chapter 21:    STATEWIDE STANDARDS FOR TIMBER HARVESTING AND RELATED  
                     ACTIVITIES IN SHORELAND AREAS**

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**AUTHORITY:** 12 M.R.S., chapter 805, subchapter 3-A; Public Laws 2003, chapter 335; Public Laws 2013, chapter 570

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**Summary:** This rule establishes statewide standards for timber harvesting and related activities in shoreland areas. In general, timber harvesting activities in shoreland areas must protect shoreline integrity and not expose mineral soil that can be washed into water bodies, including nonforested freshwater and coastal wetlands and tidal waters. Timber harvesting and related activities in shoreland areas below the 300 acre drainage point must leave windfirm stands of trees that provide adequate shade. If located in shoreland areas, roads used primarily for timber harvesting and related activities must be constructed and maintained to standards designed to minimize the chance of exposed soil washing into water bodies, including wetlands. Stream crossings must not disrupt the natural flow of water and must not allow sediment into water bodies.

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**SECTION 1.    PURPOSES**

The purposes of this rule include the following: to establish statewide standards for timber harvesting and related activities in shoreland areas; to resolve inconsistencies among existing standards; to provide maximum opportunity for flexibility; to protect public resources while minimizing impacts on private resources; to further the maintenance of safe and healthful conditions; prevent and control water pollution from various agents, including sediment, temperature, toxic materials, and excessive nutrient inputs; to maintain shoreline stability; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect freshwater and coastal wetlands; and to conserve natural beauty, open space, and public recreational values.

**SECTION 2.    AMENDMENTS TO MAINE FOREST SERVICE CHAPTER 20 RULE (FOREST  
                     REGENERATION AND CLEARCUTTING STANDARDS)**

*(Repealed)*

**SECTION 3.    SCOPE AND APPLICABILITY**

- A.    **SCOPE.** This rule governs all timber harvesting and related activities conducted in, over, or near water bodies, including rivers, streams, brooks, ponds, lakes, Great Ponds, freshwater and coastal wetlands, throughout the state, unless exempted in Section 3.C. of this rule.
- B.    **EXCLUSIONS.** The activities described in this subsection are not considered timber harvesting and must comply with the requirements for clearing or removal of vegetation

for activities other than timber harvesting under rules promulgated by the Department of Environmental Protection, Municipal Shoreland Zoning Ordinance or the Land Use Planning Commission, depending on which entity has jurisdiction.

1. Removal of vegetation in proximity to an existing developed area. For purposes of this provision, “developed area” means a footprint encompassing structures, access roads (other than land management roads), and maintained non-forested areas, on a lot with shore frontage on any great pond, stream, pond, river, or freshwater or coastal wetland. “In proximity to” describes an envelope around a developed area, and includes all areas that:
  - a. are within 50 feet of the developed area,
  - b. are between the developed area and the water body,
  - c. occupy an area whose width in parallel with the shoreline extends 50 feet beyond each end of the footprint of the developed area at its widest point.

In no case shall the envelope in proximity to a developed area be less than 20,000 square feet or less than 100 feet along the shoreline.

2. Removal of vegetation in the shoreland area from parcels less than two acres in size.
3. Removal of vegetation for the primary purpose of converting the land to a use other than forestland. If a change of land use occurs on the parcel or on any portion thereof within five years of the expiration of the Forest Operations Notification or the cessation of timber harvesting and related activities, whichever is later, the residual stand must comply with the requirements for clearing or removal of vegetation for activities other than timber harvesting under rules promulgated by the Department of Environmental Protection, Municipal Shoreland Zoning Ordinance or the Land Use Planning Commission, depending on which entity has jurisdiction. If the residual stand does not comply with these requirements after the change of land use, it constitutes prima facie evidence that a violation of the MFS Chapter 21 rule has occurred.

C. **EXEMPTION.** This rule does not govern timber harvesting and related activities in forested wetlands, unless the forested wetlands lie within a shoreland area.

D. **RELATIONSHIP TO OTHER LEGAL REQUIREMENTS.** Whenever provisions of this rule are less stringent than corresponding provisions of applicable federal, state, or municipal legal requirements, the more stringent provisions shall apply.

#### SECTION 4. DEFINITIONS

Unless otherwise provided herein, this rule incorporates by reference the definitions contained in MFS Rule Chapter 20 (*Forest Regeneration and Clearcutting Standards*). For the purpose of 12 M.R.S., chapter 805, subchapter 3-A and this rule, the following terms are defined as follows.

A. **Brook:** See “Stream Channel.”

- B. **Coastal Wetland** is defined by 38 M.R.S. §480-B (2) (Supp. 2013).
- C. **Change of Land Use** means that following timber harvesting the subsequent primary use for a particular area is not growing forest products. Change of land use may include, but is not limited to, conversion to farm pasture, site for growing agricultural crops, residential dwelling unit, development site, or gravel pit. The division of forest land into smaller units does not by itself automatically constitute a change of land use.
- D. **Cross-sectional area of a stream channel** is determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water line on one side of the channel to the normal high water line on the opposite side of the channel. The average stream channel depth is the average of the vertical distances from a straight line between the normal high water lines of the stream channel to the bottom of the channel.
- E. **Crossing** means any timber harvesting and related activity involving the passage of ground-based equipment from one side to the opposite side of a water body, or to an island or upland within a water body. Such activities include, but are not limited to construction of roads, fords, bridges, and culverts, as well as maintenance work on these crossings.
- F. **Designated Agent** means a person, company or other entity that is authorized by the landowner to act on the landowner's behalf for timber harvesting and related activities on the landowner's property.
- G. **Disruption of shoreline integrity** means the alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.
- H. **Essential Wildlife Habitat** means areas identified by the Commissioner, Maine Department of Inland Fisheries and Wildlife in accordance with the provisions of 12 M.R.S., §§12801 *et seq.* (2005 and Supp. 2013) and any Department of Inland Fisheries and Wildlife rules implementing that subchapter.
- I. **Forested Wetland** means a freshwater wetland dominated by woody vegetation that is at least 20 feet tall.
- J. **Forest Stand** means a contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.
- K. **Freshwater Wetland** means ponds, freshwater swamps, marshes, bogs and similar areas that are:
1. Inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and,
  2. Not part of a Great Pond, coastal wetland, stream, or river.

- L. **Great Pond** means any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres.
- M. **Harvest Area** means the area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.
- N. **Landowner** means a person, company, or other legal entity which holds title to land, including as a joint ownership or as tenants in common. Where the ownership of the timber located on the land is different than the fee ownership of the land itself, the owners of the timber are deemed a landowner and are jointly and severally responsible with the fee landowner to comply with this rule. Where a corporate landowner is a wholly owned subsidiary of another corporation, both parent and subsidiary are deemed the same landowner.
- O. **Land Management Road** means a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.
- P. **Licensed Forester** means a forester licensed under 32 M.R.S. §5501(3) (Supp. 2013).
- Q. **Normal High Water Line** means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of nonforested freshwater wetlands adjacent to streams and other water bodies, the normal high water line is the upland edge of the freshwater wetland, not the edge of the open water.
- R. **Permanent crossing** means any structure constructed or erected with a fixed location, in, on, or over a water body for a period exceeding 7 months in any 12 month period, including, but not limited to, culverts and bridges.
- S. **Pond** means any inland body of water which in a natural state has a surface area between 4,300 square feet and 10 acres.
- T. **Responsible party** means all of the following persons or entities, jointly and severally:
1. The landowner, or landowners, who owned the property at the time a timber harvest subject to this rule was conducted;
  2. The landowner's designated agent at the time a timber harvest subject to this rule was conducted;
  3. The Licensed Forester and/or the employer of the Licensed Forester who supervised a timber harvest subject to this rule; and
  4. The timber harvester who conducted a timber harvest subject to this rule.

- U. **Residual Stand** means a stand of trees remaining in the forest following timber harvesting and related activities.
- V. **River** means a free-flowing body of water, including its associated flood plain wetlands, from that point at which it provides drainage for a watershed of:
1. fifty square miles to its mouth in the jurisdiction of the Land Use Planning Commission; and,
  2. twenty-five square miles to its mouth in municipalities not subject to the jurisdiction of the Land Use Planning Commission.
- W. **Shoreland area** means all land areas within:
1. 250 feet, horizontal distance, of the normal high water line of:
    - a. Rivers below the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission;
    - b. Rivers below the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission;
    - c. Great Ponds and nonforested freshwater wetlands 10 acres or larger;
    - d. Any coastal wetland;
    - e. Any size pond or freshwater wetland identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat;
  2. 75 feet, horizontal distance, of the normal high water line of:
    - a. Streams between the 300 acre drainage point and the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission;
    - b. Streams between the 300 acre drainage point and the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission;
  3. Adjacent to:
    - a. The normal high water line of streams above the 300 acre drainage point; and,
    - b. Ponds or freshwater wetlands larger than 4,300 square feet but less than 10 acres that are not identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.
- X. **Shoreline:** See “Normal High Water Line” and “Coastal Wetland.”

- Y. **Significant wildlife habitat** is defined by 38 M.R.S §480-B (10) (Pamph. 2013).
- Z. **Skid Road or Skid Trail** means a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.
- AA. **Slash** means the residue, e.g., treetops and branches, left on the ground after a timber harvest.
- BB. **Stand**: see "Forest Stand."
- CC. **Stream**: means a stream channel upstream from the point at which it becomes a river.
- DD. **Stream channel** means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock; and which is connected hydrologically with other water bodies. "Stream channel" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetative cover has been removed by human activity.
- EE. **Timber harvesting** means the cutting or removing of timber for the primary purpose of selling or processing forest products.
- FF. **Timber harvesting and related activities** means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, and other activities conducted to facilitate timber harvesting.
- GG. **Used for navigation** means those rivers, streams or brooks used by motorized watercraft.
- HH. **Water body** means any river, stream, stream channel, brook, freshwater wetland, coastal wetland, pond, lake, Great Pond, or any other hydrological feature regulated by this rule.
- II. **Woody Vegetation** means live trees or woody, non-herbaceous shrubs.
- JJ. **Windfirm** means the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**NOTE:** In the context of this definition, an assessment of windfirmness will include assessment of soil conditions, depth to bedrock, and live crown ratios and height/diameter ratios on residual trees. Trees with live crown ratios of 30 percent or greater and/or trees with height/diameter ratios of 90 or less could be considered indicators of windfirmness.

## SECTION 5. SHORELINE INTEGRITY AND SEDIMENTATION

- A. **APPLICABILITY.** The requirements of Section 5 apply to all timber harvesting and related activities conducted in all shoreland areas as defined in this rule.
- B. **STANDARDS.** Persons conducting timber harvesting and related activities in shoreland areas must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream



channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected. This section does not apply to crossings of water bodies conducted in compliance with Section 11 of this rule.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

## **SECTION 6. SLASH TREATMENT**

- A. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high water line of any water body. This section does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.
- B. No accumulation of slash shall be left within 50 feet of:
  - 1. the normal high water line of Great Ponds, rivers, non-forested wetlands larger than 10 acres, and tidal waters in the jurisdiction of the Land Use Planning Commission; and,
  - 2. the normal high water line of Great Ponds, rivers, non-forested wetlands larger than 10 acres, and tidal waters in municipalities not subject to the jurisdiction of the Land Use Planning Commission.

Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil may be left in place, provided no part thereof extends more than 4 feet above the ground.

- C. Between 50 feet and 250 feet of the normal high water line of a water body identified in subsection 6.B. above, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

## **SECTION 7. STANDARDS FOR TIMBER HARVESTING AND RELATED ACTIVITIES IN SHORELAND AREAS REQUIRING A 250-FOOT ZONE**

- A. **APPLICABILITY.** The requirements of Section 7 apply to all timber harvesting and related activities in shoreland areas within 250 feet, horizontal distance, of the normal high water line of:
  - 1. Rivers below the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission
  - 2. Rivers below the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission;
  - 3. Great Ponds and nonforested freshwater wetlands 10 acres or larger;

4. Any coastal wetland; and,
5. Any size pond or freshwater wetland identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.

**B. SHADE AND TREE RETENTION STANDARDS**

Timber harvesting and related activities in shoreland areas subject to the requirements of Section 7 must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. The requirements of this section may be satisfied by following one of the following three options:

1. **Option 1 (40% volume removal)**, which requires:
  - a. Harvesting of no more than 40 percent of the total volume on each acre involved of trees 4.5 inches DBH or greater in any 10 year period is permitted. For the purposes of these standards volume may be considered to be equivalent to basal area;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - c. Within 75 feet, horizontal distance, of the normal high water line of shoreland areas regulated under this section, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high water line, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet apart. Such cleared openings will be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered equivalent to basal area.
2. **Option 2 (60 square foot basal area retention)**, which requires:
  - a. The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - c. Within 75 feet, horizontal distance, of the normal high water line of shoreland areas regulated under this section, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high water line, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet apart. Such cleared openings will be included in

the calculation of total volume removal. For the purposes of these standards, volume may be considered equivalent to basal area.

3. **Option 3 (outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the Bureau and approved by the Bureau, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S. §§8881 *et seq.* (Supp. 2013) which option they choose to use. If landowners choose Option 1 or Option 2, compliance with this section will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the required application.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

## **SECTION 8. STANDARDS FOR TIMBER HARVESTING AND RELATED ACTIVITIES IN SHORELAND AREAS REQUIRING A 75-FOOT ZONE**

- A. **APPLICABILITY.** The requirements of Section 8 apply to all timber harvesting and related activities in shoreland areas within 75 feet, horizontal distance, of the normal high water line of:
  1. Streams between the 300 acre drainage point and the 50 square mile drainage point in the jurisdiction of the Land Use Planning Commission; and,
  2. Between the 300 acre drainage point and the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission.

### **B. SHADE AND TREE RETENTION STANDARDS**

Timber harvesting and related activities in shoreland areas subject to the requirements of Section 8 must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. The requirements of this section may be satisfied by following one of the following three options:

1. **Option 1 (40% volume removal)**, which requires:
  - a. Harvesting of no more than 40 percent of the total volume on each acre involved of trees 4.5 inches DBH or greater in any 10 year period is permitted. For the purposes of these standards volume may be considered to be equivalent to basal area;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,

- c. There must be no cleared openings.
- 2. **Option 2 (60 square foot basal area retention)**, which requires:
  - a. The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
  - b. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
  - c. There must be no cleared openings.
- 3. **Option 3 (outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the Bureau and approved by the Bureau, which provides equal or better protection of the shoreland area than this rule.
 

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S. §§8881 *et seq.* (Supp. 2013) which option they choose to use. If landowners choose Option 1 or Option 2, compliance with this section will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the required application.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.
- 4. **Exception.** Timber harvesting and related activities conducted in the jurisdiction of the Land Use Planning Commission between the 300 acre drainage point and the 25 square mile drainage point are not subject to the requirements of Section 8.B. of this rule, but must be conducted to retain sufficient vegetation to maintain shading of surface waters.

## SECTION 9. SKID TRAILS, YARDS, AND EQUIPMENT OPERATION

- A. **APPLICABILITY.** The requirements of Section 9 apply to the construction, maintenance, and use of skid trails and yards in shoreland areas. This section does not apply to crossings of water bodies conducted in compliance with Section 11 of this rule.
- B. **STREAM CHANNELS.** Equipment used in timber harvesting and related activities shall not use stream channels as travel routes except when:
  - 1. surface waters are frozen and snow covered; and,
  - 2. the activity will not result in any ground disturbance.

- C. **DESIGN, CONSTRUCTION, AND CLOSEOUT.** Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body. Upon termination of their use, skid trails and yards must be stabilized.
- D. **SETBACKS**
1. Except for crossings of stream channels or freshwater wetlands, equipment used in timber harvesting and related activities, including but not limited to the use of skid trails and yards, must be operated to avoid the exposure of mineral soil within 25 feet of any water body or wetland regulated by this rule. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, plus an additional 10 feet for each 5 percent increase in slope above 10 percent. These requirements are presented in an alternative format in the slope table in Section 12 of this rule.
  2. The provisions of this subsection apply only to a face sloping toward the water body or freshwater or coastal wetland, provided, however, that no portion of such exposed mineral soil on a back face is closer than 25 feet from the normal high water line of a water body or upland edge of a freshwater or coastal wetland. The setback requirements of this subsection shall not apply to skid trail approaches to crossings of stream channels or freshwater wetlands.
  3. Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- E. **Exception.** Timber harvesting and related activities in shoreland areas of streams draining less than 300 acres and wetlands adjacent to such streams may be conducted in a manner not in conformity with the setback requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

## **SECTION 10. LAND MANAGEMENT ROAD CONSTRUCTION AND MAINTENANCE STANDARDS**

- A. **APPLICABILITY.** The requirements of Section 10 apply to the construction, maintenance, and use of land management roads in shoreland areas. This section does not apply to crossings of water bodies conducted in compliance with Section 11 of this rule.

- B. **ROAD DESIGN, CONSTRUCTION, AND MAINTENANCE.** Land management roads, including approaches to crossings of stream channels and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body. Surface water on or adjacent to crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse. Because roadside ditches may not extend to the resource being crossed, filter strips must be established in accordance with the slope table in Section 12 of this rule.
- C. **SETBACKS.** Land management roads and associated ditches, excavation, and fill must be set back at least:
1. 100 feet from the normal high-water line of a Great Pond or a river that flows to a Great Pond, rivers draining more than 50 square miles in the jurisdiction of the Land Use Planning Commission, rivers draining more than 25 square miles in municipalities not subject to the jurisdiction of the Land Use Planning Commission, nonforested freshwater wetlands 10 acres or larger, any coastal wetland, and any pond or freshwater wetland identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat;
  2. 50 feet from the normal high water line of streams draining more than 300 acres but less than 50 square miles in the jurisdiction of the Land Use Planning Commission and streams below the 300 acre drainage but above the 25 square mile drainage point in municipalities not subject to the jurisdiction of the Land Use Planning Commission; and,
  3. 25 feet from the normal high water line of streams draining less than 300 acres and ponds or freshwater wetlands larger than 4,300 square feet but less than 10 acres that are not identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.
  4. **Exceptions**
    - a. The minimum 100 foot setback specified in subsection 1 above may be reduced to no less than 50 feet, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Bureau's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
    - b. The minimum 50 foot setback specified in subsection 2 above may be reduced to no less than 25 feet, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Bureau's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling

basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body or the disruption of shoreline integrity. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

5. On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, plus an additional 10 feet for each 5 percent increase in slope above 10 percent, but in no case may the land management road setback be less than that indicated in the slope table presented in Section 12 of this rule.
6. New land management roads are not permitted within the shoreland area along Significant River Segments as identified in 38 M.R.S. §437 (Supp. 2013), nor in Resource Protection Districts as identified in municipal shoreland zoning ordinances nor in Recreation Protection Subdistricts (P-RR) as identified by the Land Use Planning Commission, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Bureau's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high water line and screened from the river by existing vegetation.

- D. **MAINTENANCE.** Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the slope table set forth in Section 12 of this rule. Where such filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- E. **ROAD CLOSEOUT AND DISCONTINUANCE.** Maintenance of the water control installations required above must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
- F. **UPGRADING EXISTING ROADS.** Extension or enlargement of presently existing roads must conform to the provisions of this section. Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.

**Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 10.C if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Bureau's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body. If, despite such



precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

- G. **ADDITIONAL MEASURES.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and stream crossings must take reasonable measures to avoid sedimentation of surface waters.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

## SECTION 11. CROSSINGS OF WATER BODIES

- A. **APPLICABILITY.** The requirements of Section 11 apply to all crossings of stream channels, rivers, ponds, lakes, Great Ponds, nonforested freshwater wetlands, coastal wetlands, and freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat.
- B. **ALL CROSSINGS**
1. Crossings must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal stream flows.
  2. **Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable to the Bureau as means of calculating the 10 year and 25 year frequency water flows and thereby determining crossing sizes as required in this section: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. *Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals*. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
  3. **Upgrading existing crossings.** Extension or enlargement of presently existing crossings must conform to the provisions of this section. Any nonconforming existing crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high water line must conform to the provisions of this section.
  4. **Bureau Permits and Permit by Rule**
    - a. **Permits.** An application for a permit must be submitted to the Bureau at least 60 days prior to the construction of any new permanent crossing or the replacement of a permanent crossing of any waterbody subject to a 250’ shoreland area as defined by §(4)(W)(1) of this rule, non-forested freshwater wetlands larger than 4,300 square feet and any crossing that will not conform to permit by rule standards. An individual permit application is required for each crossing. The permit application must contain all information required by the Bureau, including a description of how negative impacts to the resource will be avoided and minimized to

the extent practicable. When granting a permit the Bureau may impose such reasonable terms and conditions as the Bureau considers appropriate in order to satisfy the purpose set forth in its governing statutes and rules.

- b. **Permit by Rule.** Crossings must conform to standards of this section to qualify for permit by rule. If a crossing does not conform to these standards an application for a full permit must be submitted per §(11)(B)(4)(a) above. A permit by rule must be submitted to the Bureau prior to construction, maintenance, alteration, and replacement of permanent crossings of waterbodies subject to a 75' shoreland area or adjacent shoreland area as defined by §(4)(W)(2) and (3) of this rule except all non-forested freshwater wetlands greater than 4,300 square feet which require a permit as described in §(11)(B)(4)(a). Multiple crossings within one township or municipality may be submitted on one permit by rule form. The permit by rule must contain all information required by the Bureau, including:
  - i. a map showing the location of all proposed permanent crossings. Maps must be of sufficient quality and scale for a person unfamiliar with the area to locate the crossing;
  - ii. for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and,
  - iii. a statement signed by the permit applicant that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this chapter.
- c. **Exception** A permit or permit by rule is not required for the repair and maintenance of an existing crossing or for the replacement of an existing crossing, including ancillary crossing installation activities such as excavation and filling, in any protected natural resource area, as long as:
  - i. Erosion control measures are taken to prevent sedimentation of the water;
  - ii. The crossing does not block passage for fish in the protected natural resource area;
  - iii. For replacement crossings of a river, stream or brook:
    - a. The replacement crossing is designed, installed and maintained to match the natural stream grade to avoid drops or perching; and
    - b. As site conditions allow, crossing structures that are not open bottomed are embedded in the stream bottom at least 25% of the culvert or other structure's diameter, except that a crossing structure does not have to be embedded more than 2 feet.
  - iv. The Bureau is notified prior to the activity in accordance with §(11)(B)(6) of this rule.

For purposes of this subsection, "repair and maintenance" includes but is not limited to the riprapping of side slopes or culvert ends; removing debris and blockages within the crossing structure and at its inlet and outlet; and installing or replacing culvert ends if less than 50% of the crossing structure is being replaced.

5. **Other Agency Permits**

- a. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on water bodies other than a stream channel or river, including crossings of Significant River Segments and freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat or essential wildlife habitat, may require a permit from the US Army Corps of Engineers. When a permit is required, the crossing is not required to meet the standards of this section provided it conforms with all applicable state and federal requirements and any permit conditions.
- b. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.

6. **Notice to Bureau.** Notification to the Bureau is required prior to construction, maintenance, alteration, and replacement of crossings. Written notice of all temporary and permanent water body crossing construction, maintenance, alteration, and replacement activities in shoreland areas regulated by this rule must be given to the Bureau prior to the commencement of such activities. Multiple crossings within one township or municipality may be submitted on one notification form. Such notice must contain all information required by the Bureau, including:

- a. a map showing the location of all proposed permanent crossings. Maps must be of sufficient quality and scale for a person unfamiliar with the area to locate the crossing;
- b. for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and,
- c. a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this chapter.

C. **SKID TRAIL CROSSINGS**

1. **Design and Construction**

- a. All skid trail crossings of streams and rivers below the 25 square mile drainage point require a bridge or culvert sized according to the requirements of subsection 2 below.

- b. Streams above the 25 square mile drainage point may be crossed using temporary structures that are not bridges or culverts but which meet the requirements of the following subsection c; or
  - i. when stream channels are frozen and snow-covered; or
  - ii. when stream channels are composed of a hard surface which will not be eroded or otherwise damaged.
- c. All skid trail crossings of streams must be designed, constructed, and maintained, such that:
  - i. sedimentation of surface waters is reasonably avoided;
  - ii. there is no substantial disturbance of the bank or stream channel;
  - iii. fish passage is not impeded; and,
  - iv. water flow is not unreasonably impeded.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- 2. **Bridge and Culvert Sizing.** The following requirements apply to skid trail crossings of stream channels when surface waters are unfrozen:
  - a. Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows or with a cross-sectional area at least equal to 3times the cross-sectional area of the stream channel.
  - b. Temporary bridge and culvert sizes may be smaller than provided in subsection a above if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body is avoided. Such crossing structures must be at least as wide as the channel and, if not culverts, placed above the normal high water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:
    - i. use of temporary skidder bridges;
    - ii. removing culverts prior to the onset of frozen ground conditions;
    - iii. using water bars in conjunction with culverts;
    - iv. using road dips in conjunction with culverts.

- c. Culverts utilized in stream crossings must:
  - i. be installed at or below stream bed elevation;
  - ii. be seated on firm ground;
  - iii. have soil compacted at least halfway up the side of the culvert;
  - iv. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
  - v. have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, "Best Management Practices for Forestry: Protecting Maine's Water Quality" (2004). This publication is available from the Bureau and on the Bureau's website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- d. Stream crossings allowed under this section, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBMs), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

3. **Closeout.** Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

- a. Bridges and culverts installed for stream crossings by skid trails must either:
  - i. comply with the standards for stream channel crossings by land management roads as set forth in this rule, or
  - ii. be removed and areas of exposed soil stabilized.
- b. Crossing structures that are not bridges or culverts must either:
  - i. be removed immediately following timber harvesting and related activities, or,
  - ii. if frozen into the stream bed or bank, as soon as practical after snowmelt.
- c. Stream channels, banks and approaches to crossings of water bodies must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If,

despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

4. **Freshwater wetlands.** Skid trail crossings, other than those areas below the normal high water line of water bodies, must avoid freshwater wetlands and must maintain the existing hydrology of such wetlands, unless there are no reasonable alternatives, as determined by the Bureau in a written decision prior to construction.
5. **Exception.** Timber harvesting and related activities in shoreland areas of streams draining less than 300 acres and wetlands adjacent to such streams may be conducted in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

#### D. LAND MANAGEMENT ROAD STREAM CROSSINGS

1. **Design, construction, and maintenance.** Land management road stream channel crossings, including approaches to stream channel crossings, ditches and other related structures, must be designed, constructed, and maintained such that:
  - a. concentrated water runoff does not enter the water body or tributary stream;
  - b. sedimentation of surface waters is reasonably avoided;
  - c. there is no substantial disturbance of the stream bank or stream channel not directly associated with culvert or bridge installation;
  - d. fish passage is not impeded; and,
  - e. water flow is not unreasonably impeded.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, “Best Management Practices for Forestry: Protecting Maine’s Water Quality” (2004). This publication is available from the Bureau and on the Bureau’s website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

2. **Bridge and culvert sizing.** The following requirements apply to land management road crossings of stream channels when surface waters are unfrozen:
  - a. Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year

frequency water flows or with a cross-sectional area at least equal to 3 times the cross-sectional area of the stream channel.

- b. Culverts utilized in stream crossings must:
  - i. be installed at or below stream bed elevation;
  - ii. be seated on firm ground;
  - iii. have soil compacted at least halfway up the side of the culvert;
  - iv. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
  - v. have a headwall at the inlet end which is adequately stabilized by rip-rap or other suitable means to reasonably avoid erosion of material around the culvert.
- c. If a perennial water course to be crossed is to be used for navigation, the crossing must consist of a bridge span or pipe arch with at least 4 feet of clearance during normal high water for boat traffic.
- d. If the stream being crossed is a perennial watercourse and has a slope of more than 2%, a bridge or pipe arch must be used to maintain the natural streambed.
- e. Fill sideslopes in a stream or floodplain wetland must be maintained at a slope no shallower than 3 horizontal to 1 vertical and no steeper than 1.5 horizontal to 1 vertical. Fill side slopes must be stabilized at the completion of the activity.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, "Best Management Practices for Forestry: Protecting Maine's Water Quality" (2004). This publication is available from the Bureau and on the Bureau's website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- f. Temporary bridge and culvert sizes may be smaller than provided in subsection a above if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body is avoided. Such crossing structures must be at least as wide as the channel and, if not culverts, placed above the normal high water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:
  - i. use of temporary skidder bridges;
  - ii. removing culverts prior to the onset of frozen ground conditions;



- iii. using water bars in conjunction with culverts; and/or,
  - iv. using road dips in conjunction with culverts.
- 3. Stream crossings allowed under this section, but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.
- 4. **Road closeout and discontinuance.** Maintenance of the water control installations required above must continue until use of the road is discontinued and the road is put to bed by taking the following actions:
  - a. Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
  - b. Crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body.
  - c. Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
    - i. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
    - ii. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the stream channel; or
    - iii. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the water body.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**NOTE:** For guidance on reasonable measures, consult the Bureau publication, "Best Management Practices for Forestry: Protecting Maine's Water Quality" (2004). This publication is available from the Bureau and on the Bureau's website, [www.maineforestservice.gov](http://www.maineforestservice.gov).

- 5. **Freshwater wetlands.** Land management road crossings, other than those areas below the normal high water line of water bodies, must avoid freshwater wetlands and must maintain the existing hydrology of such wetlands, unless there are no reasonable alternatives, as determined by the Bureau in a written decision.

**SECTION 12. SLOPE TABLE**

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in the rule, but in no case shall be less than shown in the following table.

<b>Average slope of land between exposed mineral soil and normal high water line (percent)</b>	<b>Width of strip between exposed mineral soil and normal high water line (feet along surface of the ground)</b>
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

**SECTION 13. RESPONSIBILITY**

All responsible parties as set forth in §(4)(T)(1)-(4) of this rule may be jointly and severally responsible for compliance with this rule, and liable for violations of this rule.

**SECTION 14. VARIANCE**

A variance to the strict application of this rule may be granted as specified in MFS Rule Chapter 20 ("Forest Regeneration and Clearcutting Standards", Section 6).

**SECTION 15. VIOLATIONS**

Any responsible party, including but not limited to a landowner, a landowner's agent or a contractor, who orders, contracts for, or conducts any activity in violation of this rule commits a civil violation, and shall be penalized in accordance with 12 M.R.S., chapter 809.

**SECTION 16. EFFECTIVE DATE**

- A. The effective date of this rule in organized municipalities that have either accepted the statewide standards in accordance with 38 M.R.S. §438-B, sub-§2 or have adopted an ordinance identical to the statewide standards in accordance with 38 M.R.S. §438-B, sub-§3 is January 1, 2016.
- B. The effective date of this rule in a municipality that either accepts the statewide standards in accordance with 38 M.R.S. §438-B, sub-§2 or adopts an ordinance identical to the statewide standards in accordance with 38 M.R.S. §438-B, sub-§3 after the effective date

specified in subsection A is the date the municipality's shoreland zoning ordinance is certified by the Commissioner of the Department of Environmental Protection.

- C. The effective date of this rule in the jurisdiction of the Land Use Planning Commission is the first day of January of the second year following the year in which the Commissioner of Conservation Agriculture, Conservation and Forestry determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with 38 M.R.S. §438-B, sub-§2 or have adopted an ordinance identical to the statewide standards in accordance with 38 M.R.S. §438-B, sub-§3. Within 30 days of making the determination that the 252-municipality threshold has been met, the Commissioner of Conservation shall notify the Secretary of State in writing and advise the secretary of the effective date for the statewide standards.

Timber harvesting and related activities are not subject to this rule if, prior to the effective date of the rule, (1) notification has been filed with and accepted by the Bureau, and (2) timber harvesting has begun. Timber harvesting and related activities not subject to this rule are subject to the rules of the proper authority that were in effect at the time notification was filed and accepted by the Bureau and timber harvesting began.

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STATUTORY AUTHORITY: 12 M.R.S. ch. 805 sub-ch. 3-A; P.L. 2003 ch. 335; P.L. 2013, ch. 570

RECEIVED June 16, 2005 – filing 2005-235

CORRECTIONS:

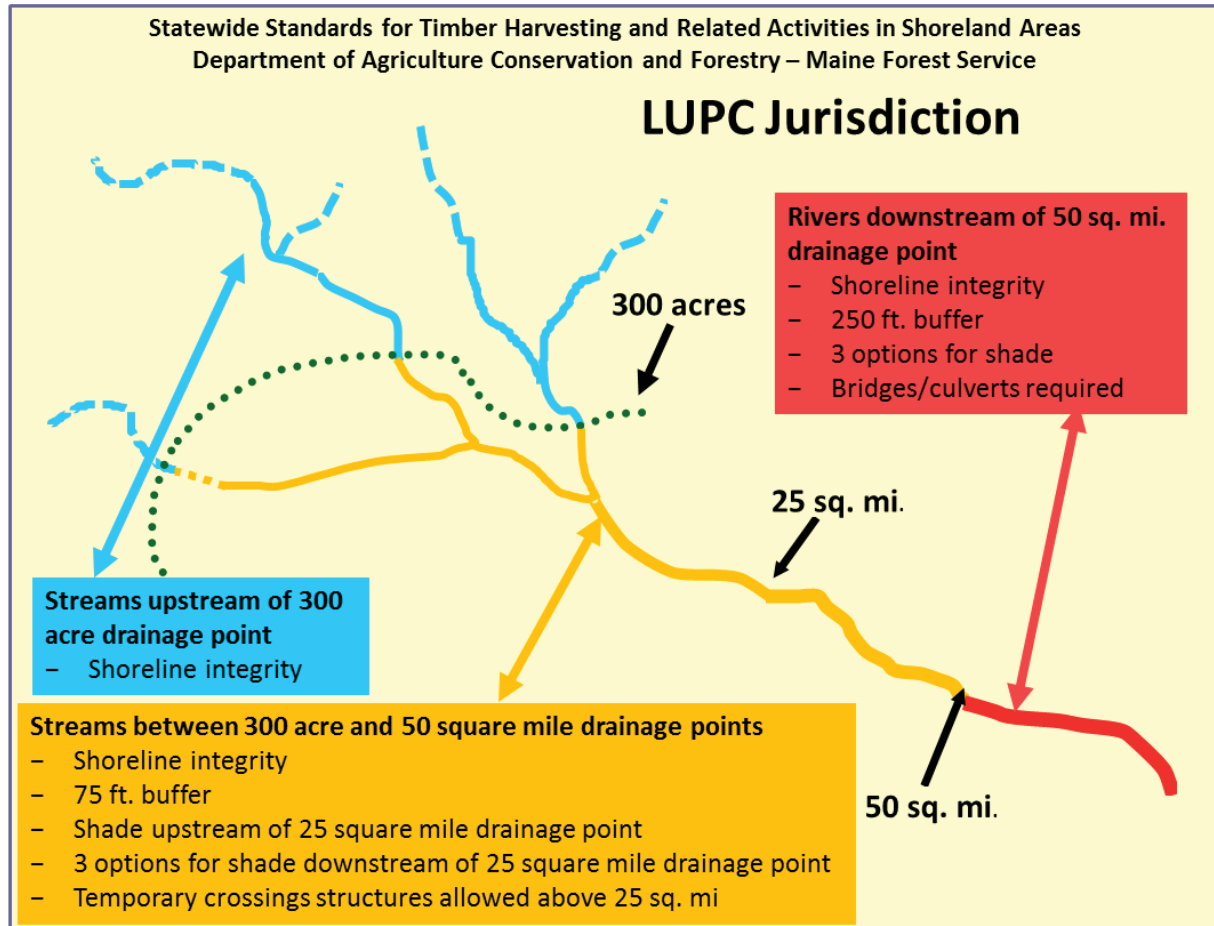
February, 2014 – agency names, formatting

AMENDED:

August 30, 2015 – filing 2015-139 (Final adoption, major substantive)

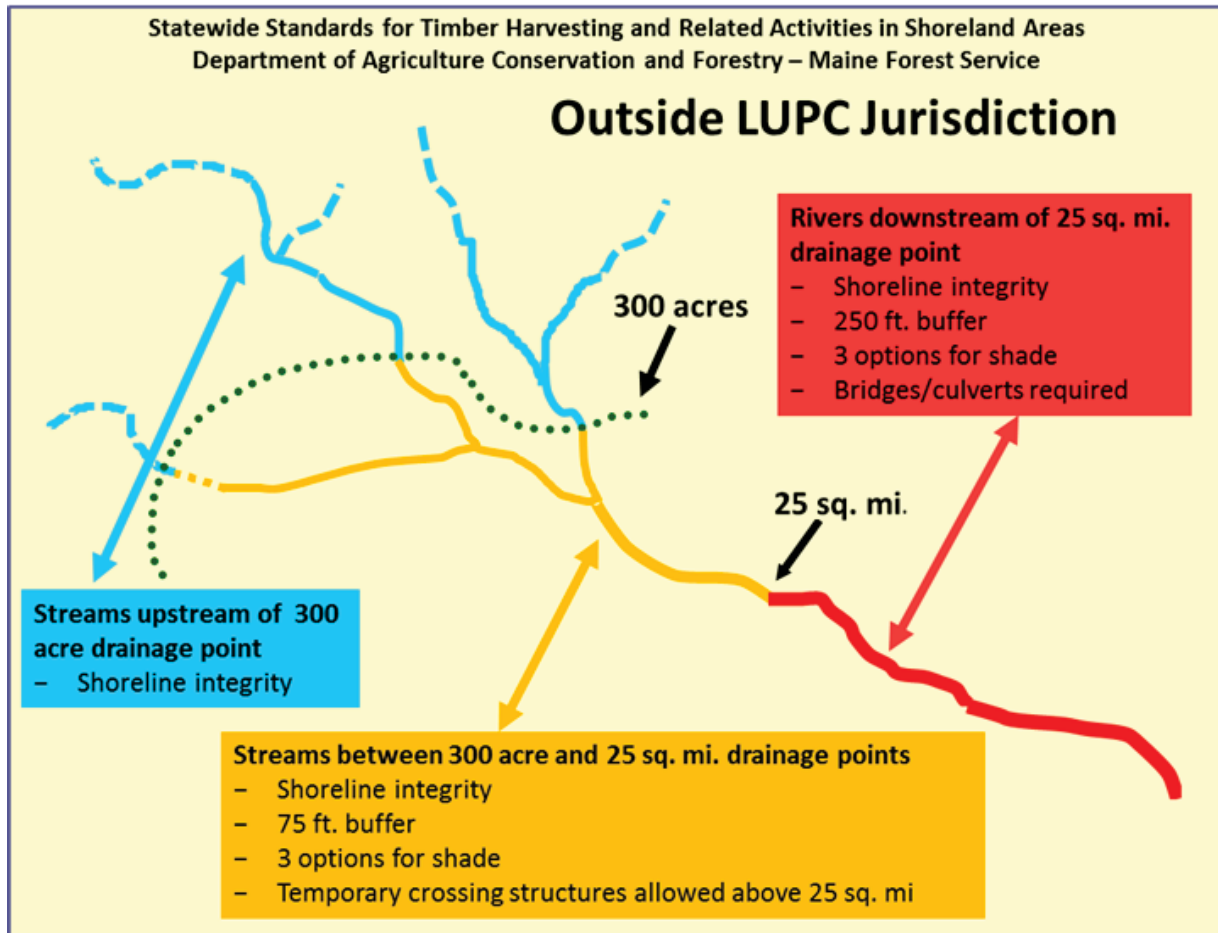
## APPENDIX 1. DIAGRAMS OF APPLICATION OF THIS RULE

**Figure 1. Application of this rule in the jurisdiction of the Land Use Planning Commission**



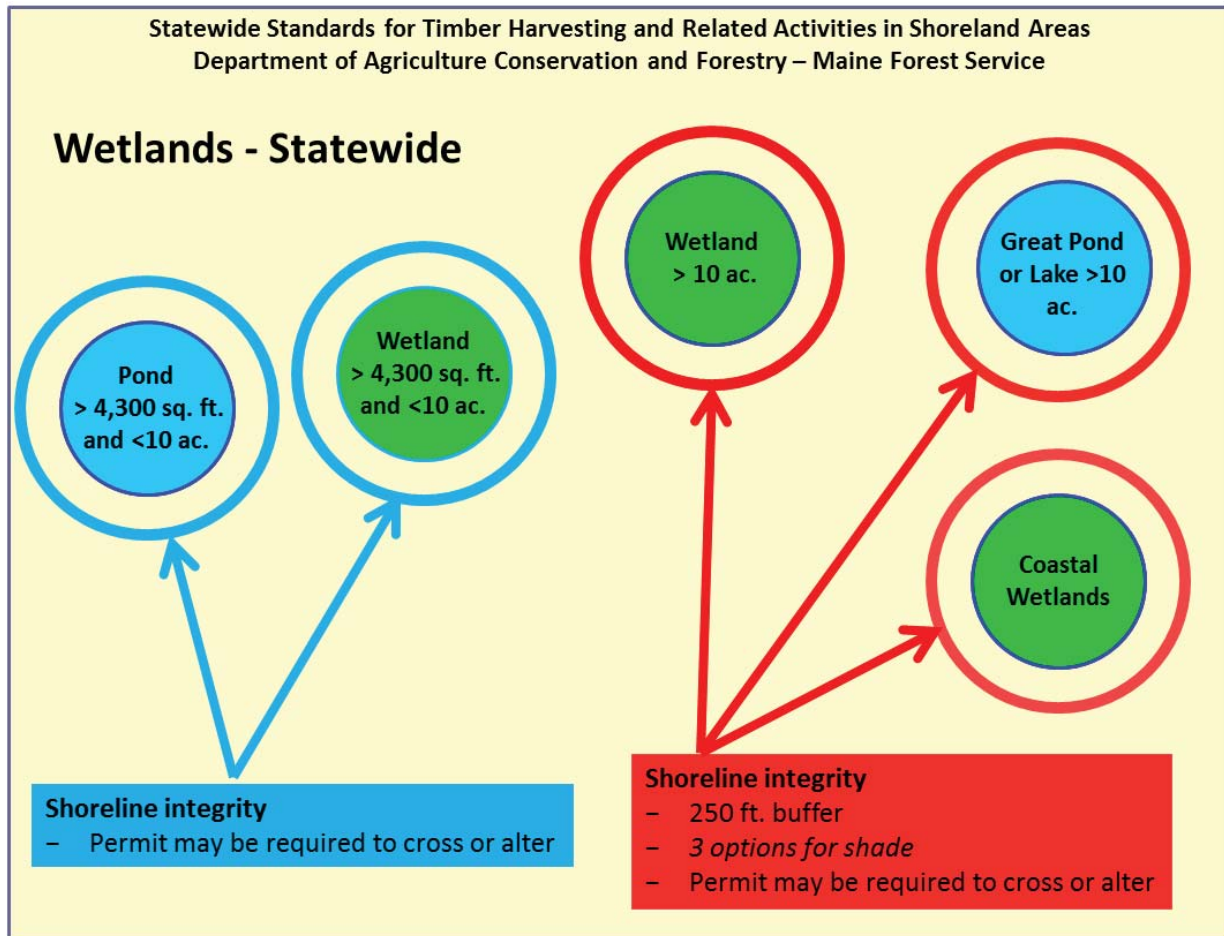
**NOTE:** This diagram is for informational purposes only. In the case of discrepancies, the written rule shall govern.

**Figure 2. Application of this rule in municipalities not subject to the jurisdiction of the Land Use Planning Commission**



**Note:** This diagram is for informational purposes only. In the case of discrepancies, the written rule shall govern.

**Figure 3. Application of this rule to wetlands statewide**



**Note:** This diagram is for informational purposes only. In the case of discrepancies, the written rule shall govern.

June 2, 1986 Draft  
SOLID WASTE FLOW COWTROL ORDINANCE

An Ordinance relating to the Disposal of Solid Waste:  
Prescribing Rules and Regulations Therefore; and providing Penalties for  
Violation Hereof.

Be it Ofdained by the Town/City of Monmouth, Maine hereinafter called  
the "Municipality").

## ARTICLE I.

### 1.1. Short Title

This Ordinance shall be known as and may be cited as the "Ordinance  
Relating to the Disposal of Solid Waste Prescribing Rules and  
Regulations Therefor: Providing Penalties for ViolationS thereof" and  
shall be referred to herein as the "Ordinance."

### 1.2. Puroose

The purpose of the Ordinance is to protect the health, safety and  
general well-being of the citizens of the Municipality; enhance and  
maintain the quality of the environment, conserve natural resources and  
prevent water and air pollution by providing a comprehensive, rational  
and effective means of regulating the-disposal of solid waste in the  
Municipality in accordance with the provisions of Title 38 M.R.S.A.  
§1304-B as amended.

### 1.3. Definitions

For the purposes of this Ordinance, the following definitions shall be  
observed in the construction of this Ordinance.

1.3.2. "Ashes" shall mean that residue from the burning of wood, coal,  
coke or other combustible material.

1.3.3. "Board" shall mean the Town Council, City Council or Board of  
Selectmen, whichever is applicable.

1.3.4. "Dispose" shall mean to discharge, dispose, deposit, dump or  
place any Solid Waste.

1.3.5. "Disposal" shall mean the discharge, disposal, deposit, dumping  
or placing of any solid waste.

1.3.6. "Hazardous Waste" shall mean a waste substance or material in any  
physical state, designated as Hazardous Waste by the terms of a certain  
Waste Handling Agreement, dated, 1986, between the Municipality and Mid-  
Maine Waste Action Corporation (hereinafter the "Waste Handling  
Agreement").

1.3.7. "Infectious Waste" shall include those wastes so defined by the  
Solid Waste Management Regulations promulgated by the Department of  
Environmental Protection pursuant to Title 38 M.R.S.A. §1304.

1.3.8 "Resource Recovery" shall mean the xecovery of enegay and  
materials or substances that still have useful physical or chemical



properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

1.3.9. "Solid Waste" shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limited to rubbish, garbage, commercial and industrial waste, scrap materials, junk, refuse, demolition and construction debris and landscape refuse, but shall not include sludge from air or water pollution control facilities, septage tank sludge or agricultural or Unacceptable Waste.

1.3.10. "Solid Waste Disposal Facility" or "Disposal Facility", shall mean any land or structure or combination of land area and structures, including dumps, landfills and transfer stations used for storing, transferring, collecting, separating, processing, recycling, recovering, treating, salvaging, reducing, incinerating or disposing of solid Wastes.

1.3.11. "Unacceptable Waste" shall mean that portion of solid waste which is not defined as Acceptable Waste by the terms of the Waste Handling Agreement and includes, but is not limited to, sewage and its derivatives, construction and demolition debris, special nuclear or byproduct materials within the meaning of the Atomic Energy Act of 1954, as amended, and Hazardous Waste.

## ARTICLE II. MUNICIPAL SOLID WASTE DISPOSAL FACILITY.

### 2.1. Designation

2.1.1. In accordance with the provisions of Title 38 M.R.S.A. §1304-B, the Municipality hereby designates the Site, as defined in the Waste Handling Agreement as its public Solid Waste Disposal Facility for the purposes cited in 1.3.10. of this Ordinance or any transfer station or other location approved in writing by MMWAC. Upon the "Commencement of Operations" as defined in the Waste Handling Agreement, the Disposal of any Solid Waste generated within the Municipality by any person or any place other than at this designated Disposal Facility or approved transfer station is prohibited, provided however, the owner of any lot, or any other person with the permission of the lot owner, may dispose or dump inert substances such as earth, rocks, concrete or similar material for fill purposes only, subject to state and local land use regulations.

## ARTICLE III. ADMINISTRATION.

### 3.1.

3.1.1. The operation of the Disposal Facility shall conform to all pertinent regulations or directives of all local, county, state or federal agencies which may have jurisdiction.

## ARTICLE IV. RESTRICTIONS AND FEES FOR DISPOSAL

### 4.1. Restrictions

4.1.1. No person, firm or corporation shall permanently dispose of Solid Waste or refuse of any kind upon any land within the corporate limits of the Municipality, unless such land has been designated by the Board as a Solid Waste Disposal Facility.

4.1.2. Certain materials may be excluded by the Board (to the extent permitted under the Waste Handling Agreement) by regulation from the

solid Waste which must be deposited at a Solid Waste Disposal Facility. These excluded materials may include junk automobile bodies and similar-bulky waste which may require special processing prior to disposal, tree and tree trunks and limbs, burning materials or materials containing hot or live coals; Hazardous Waste\*; and other materials which the Municipality deems necessary to exclude. Hazardous waste shall be handled in accordance with Title 38 M.R.S.A. §1317, et seq. as amended.

4.1.3. Except for licenoes dlsposal of Hazardous or Infectious waste it shall be unlawful for any person, firm, association or corporation to burn or incinerate any Solid Waste within the Municipality other than trees, tree limbs, leaves and other wood waste xcept to the extent otherwise permitted under the ordinances and laws of the Municipality.

## ARTICLE V. RULES AND REGULATIONS

### 5.1. Authorized DisPosal Facilitv Users

5.1.1. The availability and use of the Disposal Facility shall be limited to residents of the Municipality, and to those residents of any other municipality which may, by mutual agreement, be authorized to use the Disposal Facility. The Board may further regulate hauling of Solid waste by requiring it to be delivered to the municipal transfer station prior to transfer to the Disposal Facility.

### 5.2. Resource Recovery

5.2.1. The Municipality may require Solid Waste to be separated into such categories as may be established by any Board regulation and disposed of only in such manner and at such sites and locations as designated.

### 5.3. Property Rights

5.3.1. Any Solid Waste deposited within the Disposal Facility shall become the property of the Municipality or of MMWAC, pursuant to the terms of the Waste Handling Agreement. No one shall salvage, remove, or carry off any such deposited Solid Waste without prior approval of the Municipality or MMWAC.

## ARTICLE VI. MISCELLANEOVS

6.1.1. The Board may establish by order a schedule of license fees to be charged to commercial refuse collectors for the use of the Disposal Facility which schedule shall be posted and published. All fees collected shall be for the use of the Municipality. Any license granted hereunder may be revoked upon any violation of this Ordinance.

6.1.2. It shall be the duty of the Board or its designee to enforce the provisions of this Ordinance.

6.1.3. All-ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

6.1.4. If any section, subsection, sentence or part of the Ordinance is for any reason held to be invalid ar unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

6.1.5. Whoever violates any of the provisions of this Ordinance shall be punished by a fine of not more than one hundred (\$100.00) dollars the day of violation plus costs which fine shall be recovered on complaint to the use of the Municipality. This provision shall not preclude the Board from simultaneously seeking appropriate equitable relief.

TOWN OF MONMOUTH  
STREET AND ROAD ORDINANCE

May 1996

TOWN OF MONMOUTH  
PROPOSED  
STREET AND ROAD ORDINANCE

SECTION 1. GENERAL PROVISIONS

1.1 Title

This Ordinance shall be known and may be cited as the Town of Monmouth Street and Road Ordinance" and will be referred to herein as "this Ordinance."

1.2 Legal Authority

This Ordinance has been prepared and enacted in accordance with the provisions of Title 30-A, Maine Revised Statutes Annotated (M.R.S.A.), Section 3001, Home Rule; and Title 23, M.R.S.A., 3021 et seq. and 3382.

1.3 Purposes

The purposes of this Ordinance are to promote and protect the health, safety and welfare of the Town and its residents; and to set forth minimum standards and clear procedures for street and road design and construction, provision of vehicular access points, and excavation of streets or public ways in the Town of Monmouth in order to ensure safe and convenient circulation, prevent hazards to traffic and pedestrians and avoid traffic congestion.

1.4 Applicability

The provisions of this Ordinance shall apply to all public streets and roads and all streets and roads proposed for public acceptance, and all access points to public streets and roads from projects requiring site plan or subdivision review within the Town of Monmouth.

Please note: Compliance with the standards contained in this Ordinance shall not constitute acceptance of the road, which occurs only if the road is accepted by majority vote at the Annual Town Meeting.

1.5 Repeal of Prior Ordinance

The Street Design and Construction Standards Ordinance for the Town of Monmouth, adopted November 6, 1904, and any amendments to it, are repealed and replaced, herein, upon the adoption of this ordinance.

1.6 Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

1.7 Validity and Severability

Should any provision or section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other provision or section of this Ordinance.

#### 1.8 Amendments

This Ordinance may be amended by a majority vote of the Town at a Town Meeting In accordance with Title 30-A, M.R.S.A.. Section 3002, Enactment of Ordinances and Section 3004, Revision o' Ordinances.

#### 1.9 Effective Date

This Ordinance shall take effect and be in force from the date of its adoption by a majority vote of the Town at a Town Meeting.

## SECTION 2. DESIGN AND CONSTRUCTION STANDARDS

### 2.1 Purpose

The purpose of this Section is to set out the standards and procedures for the acceptance of a street or road by the Town of Monmouth. This Ordinance provides assurance that any street which is offered to the Town as a public way is safe and well constructed. The standards will reduce the Town's future maintenance costs. The voters at Town Meeting will be provided evidence and assurance that the street or road was or will be properly constructed before they vote to accept or reject it. This Section also provides standards which serve as goals for the reconstruction of existing town roads.

### 2.2 Applicability

A. New Town Ways. This Ordinance shall apply to the construction of all streets and roads which the Town is asked to accept as town ways after the enactment of this Ordinance.

B. Subdivisions. This Ordinance shall apply to the design and construction of all streets and roads which are part of subdivision proposals.

C. Alteration. Alterations, widening and improvements shall be consistent with this Ordinance. The Town of Monmouth shall comply to the fullest extent possible with the provisions of this Ordinance when the Town undertakes alterations, widening or Improvements. Any such modifications undertaken by the Town should at least maintain existing standards.

D. Minimum Standards. Nothing in this Ordinance shall be construed to prevent the design and construction of streets which meet higher standards or use improved methods or materials of equivalent or higher quality. The determination of the acceptability of other standards or materials shall be made by the Board of Selectpersons with the advice of the Road Commissioner.

### 2.3 Design Standards

All proposed town ways and streets or roads within proposed subdivisions shall be designed and constructed to meet the following standards, according to type:

	Road Design Standards	
	Street or Road Type	
	Collector	Local
Minimum Right-of-Way Width	60'	50'
Minimum Pavement/Travel Way Width	24'	20'
Minimum Shoulder Width	4'	4'
Maximum Grade	10%	10%
Maximum Grade within 50' of Intersections	3%	3%
Minimum Angle of Intersections	75°	60°
Minimum Sight Distance at Intersections	-	-

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1 Except In those instances when the Planning Board determines that consideration of phosphorus export warrants a reduction of the required width of shoulders to 2' and only when safety can be assured.

2 Maximum grades may exceed ten percent (10%) for short segments of less than two hundred feet (200') when the Planning Board determines that site considerations warrant an Increase

3 Street Intersection angles shall be as close to ninety degrees (90°) as feasible, but no less than the listed angle.

4 See standards for Sight Distances in Section 3, Street and Road Access Design, page 12.



## Road Design Standards

	Street or Road Type	
	<u>Collector</u>	<u>Local</u>
Minimum Property Line radii at Intersections	10'	10'
Minimum Centerline Radii on Curves	100'	100'
Minimum Tangent between Reverse Curves	100'	100'
Roadway Crown	1/4"/ft.	1/4"/ft.
Shoulder Crown	3/4"/ft.	3/4"/ft.
Maximum Side Slopes	2:1	2:1

### 2.4 Construction Standards

All proposed town ways and streets or roads within proposed subdivisions shall be constructed to meet the following standards:

#### A. Minimum Requirements

<u>Street Materials</u>	Street or Road Type	
	<u>Collector</u>	<u>Local</u>
Gravel Base Course	21"	21"
Crushed Surface Gravel Course	3"	3"
Hot Bituminous Pavement		
Total Thickness	3 1/2"	2 1/2"
Base Course	2"	1 1/2"
Surface Course	1 1/2"	1"

#### B. Right-of-Way

1. The minimum right-of-way width shall be permanently marked with granite, concrete or similarly appropriate material furnished by the applicant. The cost of the placement of monuments and survey shall be paid by the applicant.
2. The entire width of the travel way, shoulders and drainage areas shall be cleared of all stumps, roots, bushes and perishable materials.
3. The travel way section shall be in the center of the right-of-way.

#### C. Road Base

1. General Aggregates for both, the base and surface courses shall consist of granular material containing hard durable particles with reasonable uniform distribution in size from the largest to the smallest particle. Materials that have abnormally high absorption characteristics or that break up when alternately frozen and thawed or wetted and dried shall not be used. The material passing a three-inch sieve shall contain not more than seven per cent (7%) passing a No. 200 sieve. Before depositing any fill in the road base, all topsoil, including all vegetation and tree stumps, shall be removed to a firm bedding or barrier.

2. Base Course. The base course shall not contain any rocks larger than six (6) inches in diameter. All base course material shall be free of vegetable matter, lumps or balls of clay and other deleterious substances.

3. Surface Course. The top three (3) inches shall consist of durable gravel or crushed

aggregate and contain no particles larger than one and one-half (1 1/2) inches in diameter.

D. Pavement. Pavement shall be two and one half (2-1/2) inches of compacted bituminous concrete. Pavement shall be placed in two layers, a one and one half (1-1/2) inch binder course with maximum aggregate size of three quarter (3/4) inch, and a one (1) Inch surface course with maximum aggregate size of one-half (1/2) inch. The pavement material, mix design and the material of application shall meet commonly accepted standards required in good engineering practice. In the case of subdivision roads, the Planning Board may delay or waive paving until the street or road is proposed for acceptance.

#### E. Drainage

1. Adequate provision shall be made for disposal of all surface water and underground water through ditches, culverts, under drain and/or storm water drainage systems. Storm sewer systems shall be installed when required by the Select persons or Planning Board in all proposed streets within the compact or built-up sections of the town and within all residential subdivisions. Culverts shall be not less than 15" in diameter. Catch basins shall be no less than 30" in diameter. All culverts shall be designed to accommodate at least the anticipated 25-year storm.
2. Where bridge structures or reinforced concrete box culverts are required to cross major streams, detailed design plans shall be submitted to the Planning Board for review at least 2 months in advance of anticipated construction of the structure to permit appropriate review. All bridges and reinforced concrete box culverts shall be designed to accommodate at least the anticipated 50-year storm.
3. Perforated under drain pipe of at least six inches (6") diameter shall be installed to properly drain all springs or areas where the ground water level is too high and would provide a hazard to the stability of the roadway base.

F. Slope Easements. Whenever the ratio of slopes for ditches, shoulders, grading and other purposes required by this Ordinance cannot be adhered to within the right-of-way limits, and grading or excavating is necessary beyond this width, the applicant shall secure sufficient slope easement deeds from abutting owners without cost or expense to the Town and such rights properly indemnifying the Town shall be presented and recorded prior to acceptance.

G. Sidewalks and Curbs. Sidewalks, where installed, shall be at least four (4) feet wide and shall have at least a twelve (12) inch gravel base course. Curbing, where installed, shall be quarried granite stone, precast Portland cement concrete, or machine formed bituminous hot mix and shall be installed on a properly compacted gravel base.

H. Dead-end Streets. All dead-end streets shall be constructed to provide an approved cul-de-sac or turn around at the closed end.

1. Cul-de-sacs on dead-end streets shall have a minimum right-of-way radius of 60 feet and shall meet the minimum requirements of Figure #1.
2. Turn Arounds on dead-end streets shall meet the minimum requirements of Figure #2 or #3.

#### I. Erosion Control

1. Erosion and sediment shall be controlled in accordance with the standards and

specifications of the *Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices* (Cumberland County SWCD and Maine DEP, March 1991).

2. Natural and manmade drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater. They shall be stabilized by seeding, sodding, paving, or stone lining.

3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

4. The developer shall maintain all components of the erosion and sediment control and storm water management systems

#### 5. Stabilization Timelines

a. In general, all activities regulated by these standards shall be conducted after March 1st and before October 30th. All other times will require special permission from the Town.

b. Disturbed soil shall be stabilized within one (1) week from the time it was last actively worked using temporary or permanent measures such as placement of riprap, sod, mulch or erosion control blankets or other comparable measures.

c. In all cases within the shore land zones, permanent stabilization shall occur within nine (9) months of the initial date of exposure.

d. Permanent re-vegetation of all disturbed areas, using native plant material where possible, shall occur within thirty (30) days from the time when last actively worked, for spring and summer activities, by October 21st; for fall and winter activities, by June 15th: except where precluded by type of disturbance (e.g., riprap, road surfaces, etc.). The vegetation cover shall be maintained.

6. If mulch is likely to be moved because of steep slopes or wind exposure, it shall be anchored with netting, peg and twine or other suitable methods and shall be maintained until a catch of vegetation is established over the entire disturbed area.

7. Mulch or other temporary erosion control measures shall be maintained until the site is permanently stabilized with vegetation or other permanent control measures.

## 2.5 Administration

### A. Requirements

1. General. The Board of Select persons shall not lay out a street or road as a town way, nor shall it submit any article requesting the acceptance of a street or road as a town way to a Town Meeting unless it has been designed and constructed in accordance with the provisions of this Ordinance, or unless the Select persons have received from the petitioners adequate assurances that the street or road will be so constructed.

2. Subdivisions. The Planning Board shall not approve any subdivision plan unless proposed streets or roads are designed and constructed in accordance with this Ordinance, or the Planning Board has received adequate assurances that proposed streets or roads will be so constructed. The Planning Board is not precluded by this Ordinance from adopting additional or

more restrictive regulations governing a specific street or road design and construction within a subdivision, pursuant to the Town's Subdivision Ordinance and the State Subdivision Law, Title 30-A, M.R.S.A., Section 4401 et seq.

## B. Submissions

Persons (other than applicants for subdivision approval) petitioning for the laying out of a town way or dedicating a street in fee to the Town for acceptance as a town way shall submit the following information and attachments to the Board of Select persons:

1. Application Form. The application for acceptance shall be made on a form prescribed by the Town Manager and shall include the following information:

- a. The name(s) of the applicant(s).
- b. The name(s) of the owner(s) of record of the land.
- c. The name(s), registration number(s) and seal(s) of the registered surveyor and/or engineer.
- d. A statement of any legal encumbrances on the property upon which the proposed town way is located.
- e. The book and page numbers as registered in the Kennebec County Registry of Deeds and the map and lot numbers as located on the property maps of the Town of Monmouth of the property involved.
- f. The anticipated starting and completion dates of each major phase of construction.

### 2. Fees.

- a. Application Review Fee. A non-refundable fee of three hundred dollars (\$300), payable to the Town of Monmouth, shall accompany the application to cover administrative costs.
- b. Additional Fees. In addition to the application fee, there shall be a payment of one thousand dollars (\$1,000) for each mile of roadway, or portion thereof proposed for acceptance. This portion of the fees shall be known as the Street and Road Review Escrow Account. The monies shall be made by check payable to the Town of Monmouth and shall be deposited in a special bank account which is separate and distinct from all other municipal bank accounts. These funds or portions thereof may, from time to time, be used by the Town for purposes which relate to the review of an application. Such services may include, but need not be limited to, clerical costs, code enforcement services, consulting engineering fees, attorney fees, and recording fees. All such fees must relate to the review of the application for acceptance pursuant to the standards of the Monmouth Street and Road Ordinance, and in addition, may be used for the conducting of public hearings related to the review of the application.

3. Plans. The plans and illustrations submitted, as part of the application shall be drawn on sheets not smaller than 11 by 17" nor larger than 24" by 36" and shall include the following

- a. Plan, profile and typical cross section of the street or roadway, drawn to a scale 1"=20'-50' horizontal and 1"=5'-10' vertical.
- b. The direction of magnetic north and true north.
- c. The starting and ending points of the street(s) proposed for acceptance with relation to established streets, roads or ways. All terminal points and centerline alignment shall be identified by survey stationing.
- d. The name(s) of each proposed street or road, which shall be consistent with the road naming procedures of the State 911 system.
- e. The travel way limits with relation to existing buildings and established landmarks.

- f. Dimensions, both lineal and angular, necessary for locating boundaries, and necessary for locating subdivisions, lots, easements, and building lines.
- g. The lots as laid out and numbered on said street, showing the names and frontage of all owners of abutting property.
- h. All natural waterways and watercourses in or on land contiguous to the said streets or ways.
- i. The kind, size, location, profile and cross section of all existing and proposed drainage structures and their relationship to the existing natural waterways.
- j. Complete curve data, which shall be indicated for all horizontal and vertical curves.
- k. All center gradients.
- l. The turning radii at all intersections.
- m. The limits and location of all proposed sidewalks and curbing.
- n. The location of all existing and proposed overhead and underground utilities, to include but not be limited, to the following:
  - I. Public water supply lines, if any.
  - II. Sanitary sewer lines, if any.
  - III. Electrical power line poles or underground vaults.
  - IV. Telephone line poles or underground vaults.
  - V. Fire hydrants, if any.
  - VI. Street lights, if any.
- o. The location of right-of-way control survey monuments.
- p. Slope easements.

4. Subdivision Applicants. Applicants for subdivision approval shall submit to the Planning Board all information concerning proposed streets required in subsections 2.5 B. 2 and 3 above as an integral part of their applications and plans, and such additional information as required by the Town of Monmouth Subdivision Ordinance.

### C. Procedures

1. Laying Out of Town Ways. The Board of Select persons or its agent may upon petition lay out town ways in accordance with Title 23, M.P.S.A., Sections 3021 et. seq. The petitioners shall submit to the Select persons an application in accordance with subsection 2.5 of this Ordinance.

2. Application Review. The Select persons shall, after receipt of an application for street or road acceptance, notify the Town Manager, Code Enforcement Officer, Planning Board, Road Commissioner, Public Works Director, Police Department, Fire Department, Water Association, Sanitary District and Superintendent of Schools, requesting their review and written comment. The Planning Board, after receipt of an application for subdivision approval that includes proposed streets or roads, shall notify the Town Manager, Code Enforcement Officer, Planning Board, Road Commissioner, Public Works Director, Police Department, Fire Department, Water Association, Sanitary District and Superintendent of Schools, requesting their review and written comment.

### 3. Public Notice and Hearing.

- a. After the Select persons have determined that a complete application has been filed, they shall notify in writing the applicant and all property owners within 1,000 feet of the boundaries of the proposed street, and shall publish a notice in the *Kennebec Journal* and *Lewiston Sun Journal*. Property owners shall be determined by the Town's tax records and maps. Said written notice shall briefly describe the proposed street; state where the application may be inspected; and give notice that requests for a public hearing must be filed in writing to the Board of Select persons within ten (10) days from the date of

the notice.

b. Within twenty (20) days of the public notice, the Board of Selectpersons shall determine whether it shall hold a public hearing on an application. The decision to hold a public hearing is discretionary. A decision not to hold a public hearing shall not be made within fifteen (15) days of the public notice in order to permit a review of requests for a hearing.

c. In the event that the Board of Select persons determines to hold a public hearing, it shall hold such a hearing within thirty (30) days, and shall cause written notice of the date, time and place of the hearing to be given to the applicant and all parties who requested a public hearing in writing, and in addition shall cause a notice to be published in the *Kennebec Journal* and *Lewiston Sun Journal* at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing.

4. Inspections During Construction. The Road Commissioner or a representative or other agent of the Board of Select persons shall make periodic inspections of streets and roads during construction to insure that they are constructed in conformance with standards of this Ordinance. He/she shall report to the Select persons on construction progress when requested.

5. Performance Guarantees. If the street or road offered for acceptance has not been completed, adequate assurances of completion must be provided, as follows:

a. Types of Guarantees. With submittal of the application for acceptance, the applicant shall provide one of the following performance guarantees for an amount, determined by a professional engineer or estimator, adequate to cover the total construction costs of all requirements for street or road grading, filling, paving, erosion controls, sidewalks, storm drainage and utilities, as specified in the application, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

1. Either a certified check payable to the Town of Monmouth or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
2. An irrevocable letter of credit from a financial institution establishing funding for the construction of the road, from which the town may draw if construction is inadequate, approved by the Board of Select persons, or Town Manager; or
3. Any combination of the two methods described above.

b. Contents of Guarantee. The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the applicant, and a date after which the applicant will be in default and the town shall have access to the funds to finish construction.

c. Escrow Account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the town, the direct deposit into a saving account, or the purchase of a certificate of deposit. For any account opened by the applicant, the town shall be named as owner or co-owner, and the consent of the town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements.

d. Letter of Credit. An Irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the road

and may not be used for any other project or loan.

e. Release of Guarantee. Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part based upon the inspection report of the Code Enforcement Officer and whatever other agencies and departments may be involved, that the proposed road meets or exceeds the design and construction requirements for that portion of the road for which the release was requested.

f. Default. If, upon inspection, the Code Enforcement Officer or other Agent of the town finds that any portion of the road has not been constructed in accordance with the plans and specifications filed as part of the application, he/she shall so report in writing to the Board of Selectpersons and the applicant. The Board of Selectpersons shall take any steps necessary to preserve the town's rights.

6. Waiver and Modification A variation in the strict application of the standards outlined in this Section may be granted by the Planning Board if it determines that topography, soil conditions, traffic volumes and/or special project design features warrant such variation provided that public convenience, safety, health and welfare will not be affected adversely and the general intent of the standards are not violated.

7. Acceptance at Annual Town Meeting. At such time as the applicant has complied with the standards and procedures of this Ordinance to the satisfaction of the Board of Selectpersons, the Board may place an article requesting acceptance on the warrant for the next Annual Town Meeting. No street or road will be accepted until it is presented to the Town at the Annual Town Meeting and voted on affirmatively by a majority of the voters present, and the acceptance shall not become final until a deed for the title in fee simple to the property on which the street is located and slope easement deeds have been delivered to the Town and recorded in the Kennebec County Registry of Deeds in accordance with Title 23, MRSA, Section 3024.

8. Enforcement

a. No person, firm, corporation or other legal entity may construct or begin to construct any street, road or way within the Town of Monmouth which is meant for acceptance by the Town without conforming to the provisions and standards of this Ordinance.

b. Any street, road or way which has been constructed without approval in accordance with the provisions and standards of this Ordinance shall not be considered for acceptance by the Town of Monmouth until it has been reconstructed or improved in conformance with the standards set forth in this Ordinance.



## SECTION 3. STREET AND ROAD ACCESS DESIGN

### 3.1 Purpose

The purpose of this Section is to provide for vehicular access to public ways from sites and for circulation upon sites in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within developments, to avoid traffic congestion on any street or road, and to provide safe and convenient circulation on public streets and roads and within developments.

### 3.2 Applicability

This Section shall apply to applications for site plan review and subdivision approval.

### 3.3 Access Design Standards

#### A. General

1. Subdivision Access to Arterials. Where a subdivision abuts an existing arterial highway, no lot may have vehicular access directly onto that arterial, except when the Planning Board determines that the configuration and/or the natural features of a specific site warrant a waiver of this standard. In all subdivisions, any lot facing onto a previously existing public street or road shall have street frontage of not less than two hundred (200) feet in areas not served by public water or sewer and one hundred fifty (150) feet in areas served by public water and sewer. Those distances may be reduced to one hundred fifty (150) and one hundred (100) feet, respectively, if the lots access onto Internal subdivision streets rather than onto existing public streets and roads.
2. Site plan and Subdivision Development access. Provision shall be made for vehicular access to the development and circulation upon the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. More specifically, access and circulation shall also conform to the following design criteria and standards:
  - a. The vehicular access to the development shall be arranged to avoid traffic use of local residential streets where practicable.
  - b. Where a site has frontage on two or more streets, the access to the site shall be provided across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
  - c. The street giving access to the site and neighboring streets which can be expected to carry traffic to and from the development shall have traffic carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use. No development shall reduce the street's Level of Service to "D" or below as determined by using the capacity analysis procedures set forth in the *1985 Highway Capacity Manual, Special Report 209*, as published by the Transportation Research Board and as hereafter amended. Intersections on major access routes to the site within one-half mile of any entrance road which are functioning at a Level of Service (LOS) of "C" or better prior to development will function at a minimum LOS of "C" after development. If any Intersection is functioning at an LOS of "D" or lower prior to development, the project will not reduce that level of service.
  - d. Where necessary to safeguard against hazards to traffic and pedestrians and / or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle paths, driveways and traffic controls within existing public streets and roads.

e. Access ways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street or road.

f. Where topographic and other conditions allow, provision shall be made for street connections to adjoining lots of similar existing or potential use when such access will facilitate fire protection services as approved by the Fire Chief; and / or will enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a street.

B. Sight Distances. Any exit driveway or driveway lane shall be so designed in profile and grading and so located as to provide the following minimum sight distance measured in each direction. The measurements shall be from the driver's seat of a vehicle standing on that portion of the exit driveway with the front of the vehicle a minimum of ten (10) feet behind the curb line or edge of shoulder, with the height of the eye three and fifty hundredths (3.50) feet to the top of an object four and twenty-five hundredths (4.25) feet above the pavement.

<u>Allowable Speed</u> (miles per hour)	<u>Required Sight Distance</u> (feet)
25	250
40	400
45	150
50	500
55	550

C. Driveway Entrance Near Intersecting Roads. Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit shall be located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site.

D. Driveway Setback from Side Property Lines. No part of any driveway shall be located within ten (10) feet of a side property line. If there is an existing use or structure, the Planning Board may waive the 10 foot requirement. However, the Planning Board may permit a driveway serving two (2) or more adjacent sites to be located on or within ten (10) feet of a side property line between the adjacent sites.

E. Two-way Driveways. Where two (2) or more two-way driveways connect a single site to any one (1) road, a minimum clear distance of one hundred (100) feet measured along the right-of-way line shall separate the closest edges of any two (2) driveways. If one driveway is two-way and one is one-way, the minimum distance shall be seventy-five (75) feet.

#### F. Angles

1. Two-way Operation. Driveways used for two-way operation shall intersect the road at an angle as near ninety (90) degrees as site conditions will permit and in no case less than sixty (60) degrees or more than 120 degrees.

2. One-way Operation. Driveways used by vehicles in one (1) direction of travel (right turn only) shall not form an angle smaller than forty-five (45) degrees with a road.

## SECTION 4. EXCAVATION OF PUBLIC WAYS

### 4.1 Purpose

The purpose of this Section is to control all driveway entrances and excavation, backfill and surface procedures within any town right-of-way in order to prevent hazards and ensure safe traffic and pedestrian circulation.

### 4.2 Applicability

The requirements of this Ordinance shall apply to any driveway entrance or excavation and subsequent backfilling and resurfacing within any town right-of-way in Monmouth.

### 4.3 Standards

A. Opening Street. and Roads. At least one-way traffic shall be maintained at all times. Excessive size of excavation and excessive destruction of pavement will be avoided. All pavement shall be cut before excavation in such manner that the road surface will be exposed in a clean, sharp, straight edge. Trench sides will be shored so as to prevent any fallout from under the undisturbed pavement. Cutting the road surface will not be necessary before excavations of gravel streets and roads. All safety requirements necessary to perform the work in a safe, workmanlike manner will be followed.

B. Backfilling. Backfilling shall consist of placing suitable material in all spaces excavated and not occupied by drainage or other underground structures, up to three (3) inches from the existing surface. Backfill material shall consist of fine, readily compressible soil or granular material near optimum moisture content, and shall not contain large stones, frozen material or any other objectionable material. The final eighteen (18) inches of fill under road surfaces, shoulders or sidewalks shall consist of graded gravel to the specification of the Public Works Director. All material shall be distributed in not more than eight-inch (8") layers, and each layer compacted by approved compaction methods before another layer is placed. Water may be added only to improve mechanical compaction. Puddling or jetting will not be allowed. All sheeting and bracing material may be removed as the backfill operation is in progress.

C. Replacement of Surfaces. All surfaces shall be repaired with approved processed material to a compacted depth of three (3) inches, rounding about one (1) inch above the existing surfaces. Shoulders shall be brought level with existing grades with coarsed gravel. Surfaces outside the travel way but within the right-of-way shall be filled to existing grade to match existing material. Lawn surfaces within the right-of-way shall be finished with six (6) inches of loam, raked, seeded and rolled. Surplus material shall be removed from the site and the area shall be left in a clean, presentable condition. After a satisfactory period of time has passed to allow for settlement, the permittee shall permanently repair the opening to the specifications of the Public Works Director.

D. Driveway Entrances. The establishment of new driveways or entrances within Town and State rights-of-way shall be reviewed by the Public Works Director to determine the need for and placement of drainage structures.

E. Maintenance of Traffic. The permittee shall provide all facilities and traffic controls needed per the U.S. Dept. of Transportation *Manual of Uniform Traffic Control Devices*, Part VI, 1988 Edition, Revision 3, Sept. 3, 1993, to allow safe conduct of the work while maintaining public use of the site, including, but not necessarily limited to warning signs, barricades, delineators, lights, cones, etc; and flaggers with appropriate signs and ability to direct traffic through the work site. Traffic control shall be the sole responsibility of the permittee.

F. Insurance. The permittee or Contractor shall provide and maintain liability insurance coverage for Bodily Injury/Property Damage \$300,000 Combined Single Limit/\$600,000 Aggregate before the start of any work within the town way. Upon demand, a copy of the Certificate of Insurance on the Slandered Insurance Comprehensive Form shall be provided to the Public Works Department.

G. Winter Openings. No permits will be issued between November first and March fifteenth except on an emergency basis to be determined by the Town Manager or Board of Selectpersons.

H. Underground Installation of Utilities. Any underground installation within five (5) years of building and paving a street or road shall be outside of the paved area whenever feasible. Where pavement cuts are made the entire rebuilding may be requested of the responsible party and a sharing of the costs negotiated.

#### 4.4 Administration

##### A. Permits Required.

1. No person or entity except the Town Manager or his/her agent shall make or cause to be made any excavation of tilling within a Town right-of-way or dig up the paved or gravel surface of any street or road until the required fee has been paid and a written permit received from the Town Manager, except in an emergency, in which case such permit shall be secured during the first business day after the street or road has been opened.
2. No person or entity shall establish a new driveway or entrance within a Town right-of-way until the required fee has been paid and a written permit received from the Town Manager.
3. Permits shall not be required on unaccepted streets or new street or road construction.
4. The Town Manager is authorized to issue excavation and entrance permits and shall keep a record of all permits granted, except for work done by town employees.
5. The permittee is responsible for obtaining any permits or approvals as may be necessary for the work from any agency or Town department also having jurisdiction over the work, including but not limited to the following: Clearance from Underground Facility Operators (per the Dig-Safe Law), Monmouth Sanitary District, and Monmouth Water Association.

B. Application. The application for a permit shall be made on a form prescribed by the Town Manager.

C. Fees. A fee, payable to the Town, shall be required for driveway entrances and openings made within the right-of-way of any accepted town way. The rate shall be set by the Board of Selectpersons and may be adjusted annually so long as such adjustment is made prior to the first of March. Such rate shall apply until further adjusted. The fee shall be set periodically and a schedule of such fees shall be kept in the Town Office.

D. Qualification of Permit Applicant. Before any excavation permit shall be issued, the permit applicant shall satisfy the Town Manager that the applicant possesses the financing, knowledge, skill, equipment and material to perform the complete scope of work.

##### E. Procedures.

1. Before any excavation permit shall be issued, an application form, sketch plan and time

schedule for any street or road opening shall be filed with, and approved by, the Town Manager.

2. The work in progress shall be open to the Town Manager and his/her designated inspector(s) for the purpose of inspecting and enforcing the provisions of this Ordinance.

3. Upon completion of any project, the Town Manager, or his/her designee, shall determine whether the work has been performed according to the standards set forth herein. The Town Manager shall determine if an adjustment, in the form of a refund or an additional amount, is due, based upon the rate schedule.

#### F. Inspection.

1. The Public Works Director shall be contacted by the permittee to inspect all work.

Inspection notification, at least 24 hours in advance, is required for the following phases of the work:

- a. Start of work;
- b. Prior to start of any back filling operations; and
- c. Prior to start of any paving operations.

2. Where the Public Works Director or authorized representative requires corrective work upon inspection, the permittee shall comply with all such direction prior to proceeding further on the project.

3. The determination as to acceptability of the work shall be at the sole discretion of the Public Works Director.

#### G. Guarantee.

1. The permittee is responsible for and agrees to guarantee all work is free from defects in workmanship or material for a period of six (6) months from the completion of the work. If any settlement, cracking, pavement deterioration or similar problem occurs, the permittee shall promptly repair such defect at no expense to the Town of Monmouth.

2. If the permittee fails to timely repair a defect, the Town of Monmouth reserves the right to cause the repairs to be made with all costs incurred to be at the expense of the permittee.

H. Compliance and Liability. Compliance with the terms and conditions of permits issued under this Section shall be the responsibility of the permit holder. The Town of Monmouth will not assume any liability for damages arising out of or resulting from a violation of the permit terms.

I. Violations. The permittee and any person not in compliance with the provisions of this Section shall be liable to the Town for all fees and expenses of repairs, and shall be subject to penalty provisions as prescribed in Title 30-A, M.R.S.A., Section 4452, Enforcement of Land Use Laws and Ordinances.

TOWN OF MOMMOUTH  
ORDINANCE

TO REGULATE MOTOR VEHICLE  
TRAFFIC ON WILSON POND  
Enacted: January 30, 1991

TOWN OF MONMOUTH  
ORDINANCE  
TO REGULATE MOTOR VEHICLE  
TRAFFIC ON WILSON POND

I. PURPOSE

The purpose of this ordinance is to promote the health, safety and general welfare of the public by controlling the use of motor vehicles on Wilson Pond during the hours between sunset and sunrise when the lake is icebound.

II. AUTHORITY

This Ordinance is adopted pursuant to the authority contained in Title 30A, Section 3009.

III. OPERATION UNLAWFUL

It shall be unlawful to operate a motor vehicle as defined in Title 29, Section 1, Sub-Section 7 (\*) on Wilson Pond from sunset to sunrise of the following day, except as otherwise provided herein.

IV EXCEPTION

The prohibition contained in Section III of this Ordinance shall not apply to such use of motor vehicles as is reasonably necessary to plow skating rinks or obtain access to lakeside camps which the operator of the motor vehicle owns or has permission from the owner to use, provided, however, that a permit shall first be obtained for such use from the Police Department or appropriate Local Official. A grace period shall be provided for persons fishing on the lake during the period between sunset and one-half hour thereafter and during the period between sunrise and one-half hour prior thereto.

V. ENFORCEMENT

This Ordinance may be enforced on any portion of the lake by any law enforcement officer of the Town of Monmouth or the Town of Winthrop or the Town of Wayne.

VI. PENALTY

The driver of any vehicle found to be in violation of this Ordinance shall be subject to court process in the Maine District Court and shall be subject to a fine of \$100 for each such violation.

VII. EFFECTIVE DATE

This Ordinance shall take effect after passage by the Board of Selectmen of Monmouth, the Board of Selectmen of Wayne and by the Winthrop Town Council.

\*DOES NOT INCLUDE SNOMOBILES OR ATV's.

This Ordinance to Regulate Motor Vehicle Traffic on Wilson Pond is enacted this 30th day of January 1991.

Bruce G. Gray, Selectman

Richard H. Gallop, Selectman

Albert L. Fournier, Selectman